(1) Court, U.S.
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No. _____

In The
Supreme Court of the United States

LARRY E. PARRISH,
Petitioner,

v.

STEVEN CRAIG COOPER, ET AL.,
Respondents.

Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI
with Appendix

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July, 2000

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27 pp

QUESTION PRESENTED

Is a private attorney who renders professional legal service to a public prosecutor unqualified for immunity from Title 42, ***United States Code*** §1983 (hereinafter §1983) suits:

i). **Even though** the public prosecutor seeks out and solicits the assistance of the private attorney;

ii). **Even though** the Governor and the Attorney General of Tennessee join in the appointment specifying in a writing the terms and conditions and secure a signified commitment from the private attorney to abide by the terms and conditions, all of which is memorialized over the signature of the Governor, the Attorney General and the private attorney;

iii). **Even though**, on oath before a duly empowered court, the appointment of the private attorney is memorialized as an official public record of the court;

iv). **Even though** the private attorney's appointment is conditioned on and in actuality is carried out under the close supervision of the public prosecutor;

v). **Even though**, in performance of the responsibilities encompassed in the appointment of the private attorney, the private attorney works side-by-side with the public prosecutor and his assistants performing tasks related to and for no other purposes than preparation for the filing of specific civil lawsuits to accomplish a specific objective by the filing of said civil lawsuits;

vi). **Even though** the work performed by the private attorney, in no material respect, is able to be distinguished from that performed by the public prosecutor and his assistants with whom the private attorney works to prepare and file the lawsuits;

vii). **Even though** the private attorney, in

assisting the public prosecutor as solicited, acted in no capacity other than under the color of state authority; and

viii). **Even though** the public prosecutor, his assistants, the judge and all other full-time employees paid with public funds, with whom the private attorney worked in carrying out the tasks involved in the assignment, were absolutely immune from §1983 suits, because Petitioner signed no "written contract" and was not a "public official"?

PARTIES TO THE PROCEEDING

Petitioner

Petitioner Larry E. Parrish is a human being filing in no capacity other than as an individual citizen of the United States.

Respondents

Steven Craig Cooper, Southern Entertainment Management Co., Inc., Night Moves of Memphis, Inc., Amanda Holland, David S. Tubbs, Ashley Burnette, Jeffery H. Toney, Tammie Wilson, Allison Rodgers, Ronnie Brothers, Rosalind Dearing, Cynthia Cooper, Roydon Stone, Jennifer Ann Cleveland, Fred Day, Robert Holland, Beverly McFarland, Tammy Zanetti, Geanna Smith, and Deneen Tong Individually and on behalf of all other persons similarly situated.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 203 F.3d 937 (6th Cir. 2000) reh. *en banc* den. May 12, 2000. A copy of the opinion is included in the Appendix A. The opinion of the United States District Court for the Western District of Tennessee is reported at 20 F. Supp.2d 1204 (W.D. Tenn. 1998) and is included in Appendix B.

JURISDICTION

The jurisdiction of the District Court was invoked as federal question original jurisdiction pursuant to Title 28, ***United States Code*** §1331 and §1343 (3) and (4). The Court of Appeals' jurisdiction resulted, pursuant to Title 28, ***United States Code*** §1291, from Respondents' direct appeal, as a matter of right, from a final judgment of the District Court. The opinion of the Court of Appeals was filed February 9, 2000. The petition for a rehearing, suggested to be an *en banc*, was filed, by order of the Court of Appeals, March 28, 2000. On May 12, 2000, the Court of Appeals denied the petition for a rehearing (App. J). On May 30, 2000, the Court of Appeals filed its order staying (App. H) entry of the Court of Appeals' mandate for a period not to exceed ninety days, from May 12, 2000, pending the filing of the instant petition for writ of certiorari. The jurisdiction of this Court is invoked pursuant to Title 28, ***United States Code*** §1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 42, ***United States Code*** §1983.
Tennessee Constitution, Art.VI, §5
Tennessee Code Annotated §8-6-106
Tennessee Code Annotated §8-7-103
(See App. R for full text)

S TATEMENT OF THE CASE

This case was initiated by the filing of two separate complaints (App.K, App.L) by owners, employees and independent contractors profiting, in one way or another, from the operation of certain business establishments in Memphis, Tennessee. The two complaints were consolidated for joint disposition (App. G). All plaintiffs in the consolidated case are respondents (hereinafter **"Respondents"**).

In the District Court, Respondents sued The Honorable D.J. Alissandratos, Chancellor, Thirtieth Judicial District of Tennessee, John Pierotti, District Attorney General, Thirtieth Judicial District of Tennessee (hereinafter **"District Attorney"**), two Assistant District Attorneys, a full time investigator employed by the District Attorney and a Special Agent for the Tennessee Bureau of Investigation.

Respondents also sued Larry E. Parrish (hereinafter **"Petitioner"**), a private attorney appointed by the District Attorney, the Governor and the Attorney General of

Tennessee to assist the District Attorney, on relation of the State of Tennessee, in abating specific public nuisances.

The District Court, pursuant to ***Federal Rules of Civil Procedure***, Rule 12(b)(6), filed orders of dismissal (App. B; App.C; App. D; App. E; App. F), finding Petitioner and Petitioner's co-defendants absolutely immunized from suit filed pursuant to either §1983 or the Tennessee common law. ***Cooper v. Parrish***, 20 F. Supp.2d 1204 (W.D. Tenn. 1998).

The Court of Appeals below reversed (App. A) the District Court dismissal with respect to Petitioner and all of Petitioner's co-defendants to the extent claims filed by Respondents alleging violations of Tennessee common law.

With respect to claims made pursuant to §1983, the Court of Appeals sustained the District Court's dismissal, based on absolute judicial/prosecutorial immunity with respect to all of Petitioner's co-defendants except the District Attorney. As to the District Attorney, the Court of Appeals sustained the dismissal of the District Court but did so on grounds different from the District Court, i.e., on qualified immunity rather than absolute prosecutorial immunity (because he personally made oath on the verified nuisance abatement complaints).

The Court of Appeals reversed the District Court's dismissal of §1983 claims against Petitioner holding that Petitioner was not immunized from suit. The Court of Appeals singled out Petitioner because he was not a "public

official"[1] and had not been engaged to render services for the District Attorney and Attorney General by written contract.[2]

No answers were filed by Petitioner or any co-defendant of Petitioner. The only "facts" before the District Court and the Court of Appeals below, relevant to the subject of dismissal, were those alleged in the complaints filed by Respondents. And only those "facts" alleged in the complaints relevant to questions determinative of whether there exists absolute immunity from suit are material to Petitioner's motion to dismiss.

The complaints allege that the District Attorney, the two Assistant District Attorneys and Petitioner, as counsel of record, filed, for the District Attorney on relation of the State of Tennessee, civil public nuisance abatement lawsuits, pursuant to the common law and controlling statutes of Tennessee. Filing these suits resulted in execution of an *ex*

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[1] The "public official" requirement seems to have more to do with the source of the compensation of Petitioner than the capacity or office of Petitioner.

[2]How much more of a "written contract" could be had than letters (App. O) specifying the details of the terms and conditions of the appointment memorialized over the signature of the Governor, the Attorney General of Tennessee and Petitioner and by a formal oath of office (App. P) before a duly authorized court of record?

parte order signed by Chancellor Alissandratos, presiding for Chancery Court, requiring certain real and personal property to be taken *in custodia legis*.

The complaints explicitly allege that Petitioner **assisted** the District Attorney.

The complaints state as follows (App. K, p.9):

> [T]he Defendants, **Pierotti, Weirich and/ or Nichols** [District Attorney and Assistant District Attorneys] then **sought** the **assistance of** the Defendant **Parrish** relative to taking legal action.... (emphasis added)

Another of Respondents' allegations, on this issue, is as follows (App. L, p. 21):

> Defendant Parrish [Petitioner]...**with the authorization or approval of...Pierotti** [District Attorney]...undertook to investigate and prepare a legal action to be brought on relation of the District Attorney in the name of the State of Tennessee....
>
> * * *
>
> Defendant Parrish [Petitioner], acting as counsel along with assistants to...Pierotti [District Attorney], **filed on behalf of the state**...pleadings), (emphasis added)[3].

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[3] See also **¶¶ 81,89,97,103** (App. L, pp. 35, 38, 41, 44), pertaining, respectively, to Counts 1-4 of same, which all

On a determination that Petitioner was not a "public official," the Court of Appeals below reinstated and remanded §1983 claims against Petitioner.

The Court of Appeals below makes reference to language in a non-final ruling by the Tennessee Court Of Criminal Appeals [***State v. Culbreath***, 1999 Tenn. Crim. App. LEXIS 191(Tenn. Crim. App., W.S., 1999) perm. app. granted September 13, 1999 (App. I, p. *23)], which, at best, is *obiter dictum* but, more precisely, has zero status as law, of either the persuasive or precedential type (see *infra* at 9) but, if law, would totally support the conclusion that Petitioner is entitled to absolute immunity.

> In ***Culbreath***, the Court stated (App. I, p.10):
>
> This Court in no way questions the motives or integrity of Parrish [Petitioner], ... [Fn. 5] The record reflects a zealous prosecutorial effort to pursue alleged criminal violations and alleged nuisances. However, that is not the issue before this Court. At issue is whether **a private attorney, specially appointed** to assist the District Attorney General... should be disqualified from prose-cutorial partake-pation if the attorney received

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allege that "Parrish [Petitioner] was **acting with** decision making **authority delegated directly** to him **by...Pierotti**....(emphasis added)

substantial compensation from a private, special interest group.

* * *

[Fn.5] In fairness..., we know this case presents an issue of first impression. (emphasis added)

In other parts of ***Culbreath***, the Court takes note (App. I, p. *10) that "the District Attorney General...**informally appoint[ed] Parrish to act on behalf of the state**..." (emphasis added). The ***Culbreath*** court further notes (App. I, p.*3) that "Parrish **was contacted** by... Pierotti and "**requested** Parrish's **assistance**," that (App. I, p.*4) "**Pierotti** was the ultimate **decision making** authority, **not Parrish**," and that (App. I, p.* 5) **Parrish "took an oath of office** in July 1996" by which "the District Attorney General... formally appoint[ed] Parrish... as a "Special Assistant District Attorney...."

In ***Culbreath***, the court noted that the statute, by which the Governor and Attorney General appointed Petitioner as an "Additional Counsel" to the Attorney General and the District Attorney, specified that the compensation for Petitioner could be payable from the state's treasury.[4]

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[4] The statute, ***Tennessee Code Annotated*** §8-6-106, as noted by the ***Culbreath*** court (App. I, p.*10-12), actually states "the governor shall employ such counsel, who shall be paid such compensation...as the governor...**may deem just**...."(emphasis added). The letters (App. O) from the

The ***Culbreath*** court raised the question (but because irrelevant did not answer) whether the fact that the Attorney General and Governor specified that payment was to be by private funds compromised the appointment. The ***Culbreath*** court stated (App. I, p.*11): "Although the **lack** of **compensation from** the state **treasury** might **not nullify** the **appointment**, the method of compensation...justifies his disqualification **in the criminal prosecution**."(emphasis added)[5]

Granted, the ***Culbreath*** court, in something equivalent to an immaterial aside, noted (App. I, p.*10) the absence of "**statutory**" authority for the District Attorney's appointment of Petitioner as a "Special Assistant District

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Governor and Attorney General spelling out the terms and conditions of Petitioner's appointment explicitly state that Petitioner was to be compensated directly by private funds and the contributors providing those funds and the amounts provided by each had to be reported to the Attorney General.

[5] Nothing in the ***Culbreath*** decision addresses Petitioner's standing to prosecute the **civil nuisance statement petitions**, which is the sole subject matter of the complaints filed by Respondents against Petitioner and his seven co-defendants in the case *sub judice*.

Attorney." Likewise, the ***Culbreath*** court questioned (App. I pp.*10-*11) the statutory authorization of the Attorney General and the Governor to appoint Petitioner as "Additional Counsel" was followed accomplished as anticipated by statute. However, at no point, neither by implication nor explicitly, did the ***Culbreath*** court indicate that, in order to have the immunities of a public official, there must be a statutory basis for such an "appointment." Indeed, nothing requires either the Governor/Attorney General or the District Attorney to be authorized by a statute to make the appointment because all such persons occupy constitutional offices.

However, what is even more important about the ***Culbreath***decision is that, in clear terms, the ***Culbreath*** court takes note, as if **a fact**, that Petitioner did everything Petitioner did **at the request, enlistment, behest and** under the **direction** of the Attorney General, the Governor and the District Attorney. All three of these high public officials are stated to have enlisted the services of Petitioner, **memorialized** by official documentation. Yet, the Court of Appeals below determined that Petitioner was not acting at the behest of public officials because, unlike the facts in ***Cullinan v. Abramson***, 128 F.3d 301,310 (6th Cir. 1997), there was **no written contract**.[6]

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[6] Particularly, the Court of Appeals below says: [T]here is little if any **evidence** that shows that Parrish was acting at the **behest** of the state...." (emphasis added). The

The Tennessee Supreme Court granted permission to appeal the ***Culbreath*** decision on September 13, 1999 and heard oral argument on April 12, 2000. In Tennessee, a decision of a court that remains on appeal has no standing as law, even as law of the case.[7] Also, ***Rules Of The Tennessee***

Respondents alleged in their complaints that Petitioner engaged in all of the activity at issue at the behest of the District Attorney, and the proceeding [a motion to dismiss pursuant to ***Federal Rules of Civil Procedure***, Rule 12(b)(6)] is not one where evidence was presented.

[7] ***Rules Of The Tennessee Supreme Court***, Rule 4 (App. Q); ***Railroad v. Brigman***, 95 Tenn. 64, 32 S.W.2d 762, (1895) ("judgment...not final....had been appealed...was still pending and undetermined."); ***Turley v. Turley***, 85 Tenn. 251, 258-259, 1 S.W. 891 (1886) ("The appeal...vacated the decree...."); ***Hall v. Calvert***, 46 S.W. 1120, 1125-1126 (Tenn. Chan. 1897) ("[W]here...appeal is prayed..., there is [no] final judgment so long as the cause is pending in the appellate court."); ***W.V. Davidson Lumber Co. v. Jones***, 62 S.W. 386, 388 (Tenn. Chan. App. 1901) ("[N]o final judgment..., inasmuch as the judgment...has been appealed from, and the appeal is still pending."). Having heard oral arguments, the Tennessee Supreme Court, any day, could

Court of Criminal Appeals, Rule 19 (reference to which is published with the unreported version of ***Culbreath***) restricts use of ***Culbreath*** as precedent.

REASONS FOR GRANTING WRIT

This Court last addressed the question, absent considerations relative to the source of the compensation of the private person and in a context of qualified immunity instead of absolute immunity, here presented in its opinion in ***Richardson v. McKnight***, 521 U.S. 399 (1997). The Court split, 5-4 in ***Richardson***. In what appears to be an important attempt to narrow the difference between the majority opinion and the minority opinion, there are two portions of each which crystallize the core of the question in the instant petition.

More particularly, the dissenting opinion states as follows in ***Richardson***, *supra*, 521 U.S. at 417-18:

> Private individuals have regularly been accorded immunity when they preform a governmental function that qualifies. We have long recognized the absolute immunity of **grand jurors**, noting that **like prosecutors** and judges they must "exercise a discretionary judgment on the basis of evidence presented

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decide ***Culbreath***.

to them" *Imbler*, 424 U.S. et 423, n.20. "It is the functional comparability of [grand jurors'] judgment to those of the judge that has resulted in [their] being termed 'quasi-judicial' as well" Ibid. Likewise witnesses who testify in court proceedings have enjoyed immunity regardless of whether they were governmental employees. "The common law" we have observed, "provided absolute immunity from subsequent damages for all persons–governmental or otherwise–who were integral parts of the judicial process." *Brisco, supra* at 335 (emphasis added).

I think it **highly unlikely** that we would **deny prosecutorial immunity** to those **private attorneys** increasingly employed by various jurisdictions in this country to conduct high-visibility criminal prosecutions. (citations omitted) (emphasis added).

The majority opinion included the following words in ***Richardson***, *supra,* 521 U.S. at 413:

We close with three caveats.

* * *

Second, **we** have **answered** the **immunity question narrowly, in** the **context** in which it arose. That context is one in which a private firm systematically organized to assume a **major lengthy administrative**

task (managing an institution) **with limited direct supervision** by the government, undertakes that task for profit and potentially in competition with other firms. The **case** does **not involve a private individual briefly associated** with a government body, serving **as an adjunct to government in** an **essential** governmental **activity**, or **acting under close** official **supervision**. (emphasis added)

The decision of the Court of Appeals below creates a never-before-pronounced rule of law (i.e., compensation by private funds, standing alone and without consideration of any other factors, blocks a private attorney's access to §1983 immunity available to co-defendants who were compensated with public funds).

The net effect of the Court of Appeals' reversal of the District Court is to eliminate access of public prosecutors in the Sixth Circuit to private attorneys except to private attorneys who are "public officials." A private attorney, as later herein discussed, who becomes a "public official" no longer is a "private attorney."

On examination, what apparently lies behind the Court of Appeals' decision denying Petitioner access to immunity, appears to be more than that Petitioner is not a "public official." The "public official" language relates to the source of the funds used to compensate Petitioner in comparison with the source of funds used to compensate Petitioner's "public official" counterparts who engaged in the same

activities.

The bottom-line policy statement by the Court of Appeals below is that, if compensation, for activities alleged in a §1983 complaint, is from private funding, all of the "even though" factors listed in Petitioner's statement of the question are reduced to immaterialities.

Because the source of the funds by which the compensation for the prison guards in ***Richardson v. McKnight***, *supra* at 10 was not an issue, the instant case presents a factor not previously addressed by this Court. Thus, this Court's ***Richardson*** ruling is not sufficiently on point to classify the Court of Appeals' published decision below as an erroneous application of a rule rightly perceived. Additionally, the problem in society which results from the Court of Appeals' overturning the District Court is not the same as the problem presented in ***Richardson***.

Were the prison guards in ***Richardson*** denied qualified immunity because they were not "public officials" or because they had not signed a "written contract" with the State of Tennessee? If so, this Court gave not a hint that either of these factors had any influence of the decision. Indeed, there was an extensive contract with the State, and the decision seems predicated on the fact that the prison guards were not "public officials."

The question is: So what? Is the public policy which the Sixth Circuit's new law bad public policy? If bad public policy, is it bad enough to deserve this Court's attention?

Petitioner respectfully suggests that new law creates bad enough public policy to deserve correction by this Court because the new law potentially impacts, in a negative way, every public prosecutor in the United States. The new law will bring to a halt the increasing trend of public prosecutors to overcome fiscal and personnel constraints by soliciting the assistance of private sector attorneys. How so will consume the remainder of this petition.

The message from this Court, if the Court of Appeals below is reversed, will resolve a lingering question, that now has no certain answer, but creates a damper requiring private attorneys to be reticent to lend assistance to public prosecutors. Each private attorney so solicited, now , must ask: "Will I have the same access to §1983 immunity as the prosecutor?"

Cases which give opportunity for this Court to address this issue in a direct way unencumbered with collateral issues, rarely are presented to the Court.

In this case, Petitioner was engaged by the District Attorney, on appointment by the Governor and the Attorney General of Tennessee, briefly associated with the District Attorney, acting under close official supervision, to be counsel of record for the State of Tennessee in high-visibility civil nuisance abatement cases.

Petitioner was granted absolute prosecutorial immunity by the District Court.

It would seem that an implication to be derived from a reading of the separate opinions of this Court in ***Richardson***

leads to a conclusion that all nine Justices are united on the proposition that a private attorney engaged by public officials to serve as counsel of record for the State of Tennessee in civil nuisance abatement cases and who worked under close supervision of the District Attorney to accomplish a discrete task, is entitled, as the District Court ruled, to the same §1983 immunity as the District Attorney and full-time Assistant District Attorneys.

The Court of Appeals below published its opinion without restricting its use as precedent.

The proposition that Petitioner was acting under color of state law is unchallenged. So, the Court of Appeals below created new law making a private attorney acting for a government in one of its essential functions, but who is not a "public official" serving with a "written contract," exposed to suit under §1983 while the public prosecutors with whom the private attorney works, side-by-side, under the close supervision and engaging in acts indistinguishable from the acts of the public prosecutors are absolutely immune from §1983 suits.

In ***Briscoe v. Lahue***, 460 U.S. 325 (1983), this Court includes, as Section II on pages 334-336, language explaining the historicity of the longstanding rule which is summarized, at 335, as follows: "In short, the common law provided absolute immunity from subsequent liability for all **persons-governmental or otherwise** who were integral parts of the judicial process" (emphasis added).

Then, this Court states as follows, in footnote 15 of ***Briscoe*** at 336:

> The common-law immunity that protected witnesses as well as other participants in the judicial process drew **no distinction between public officials and private citizens**. See ***Veeder***, supra n.12 [9 Colum. L. Rev. 463] at 468-469. (emphasis added)

The essence of the Court of Appeals reversal of the District Court, relative to the "public official" status of Petitioner, is that Petitioner was not compensated with public funds; instead, Petitioner was compensated with private funds. That is, by holding that absolute immunity is available only to a "public official," the gravamen of the new rule is that the private attorney must be compensated with public treasury funds. The notion of a "public official" being paid, voluntarily and directly, by private citizens using private funds, for the public service of the " public official" is unknown unless an unstated special definition is being used for "public official."

How can an attorney who is under "written contract" with a governmental agency, who is compensated for his/her services to the agency with funds from the public treasury and who is a "public official," be defined as a "private attorney?" Petitioner respectfully suggests that this is not logically possible if the plain and ordinary meanings are ascribed to the words. Petitioner respectfully suggests that being a "private

attorney," by the necessity of the case, connotes that the attorney is compensated with money from a private source. Petitioner respectfully suggests that the baseline distinction between a "private attorney" and a "public attorney" (or "public official") is the source of the money used to commensurate the attorney.

So, the net effect of the Court of Appeals' reversal of the District Court is to create binding federal law in Michigan, Ohio, Kentucky and Tennessee, that a "private attorney," all other considerations to the contrary notwithstanding, is never immune from §1983 suits. To the contrary, at least in the Sixth Circuit, only "public officials" have access to absolute prosecutorial immunity.

As noted in the minority opinion in ***Richardson***, use of private attorneys to assist public prosecutors is a trend.

It is self-evident that public prosecutors having access to personnel and expertise of private sector attorneys as a means to increase the capacities of public prosecutors without the necessity to deplete revenues budgeted from the public treasury, portends an increase in the quantity and perhaps the quality (in some areas) of the public prosecutors' production.

The impact of new laws being piled on public prosecutors without concomitant increases in personnel and funding is obvious to every knowledgeable observer. This creates the necessity for duties of the public prosecutors to go wanting.

The over-worked, understaffed, underpaid and other-

wise under funded conditions plaguing public prosecutors, often times, leaves them engaged more in triage than reasonable exercise of discretion.

Many public prosecutors are forced into an unhealthy prioritizing, in effect, having a virtual veto able to render nugatory enactments by legislatures, pretermit the judiciary and leave the executive departments non-functional in areas where the agencies of the executive departments (e.g., law enforcement agencies) are dependent on prosecutorial enforcement.

Unintended power begins to concentrate in the public prosecutor because he/she is fiscally incapacitated by the inability to function at anywhere close to minimal expectations.

The public is deceived by believing that certain matters of public interest are being minded by the public prosecutor, sometimes exclusively, when, in reality, those matters are going unattended. This has a ripple effect because so many parts of governments depend on the public prosecutor to do what the law assigns as his/her duties.

In some areas of responsibility, the lack of attention to certain functions persists for such an extended period that the expertise needed by the public prosecutor to perform the unattended function lapses into nonexistence.

A resource which is proving to be part of the solution is engaging the services of private attorneys, thereby, picking up personnel and, sometimes, added expertise without

depleting funds appropriated to the public prosecutor. Reality is that there rarely, if ever, is enough public treasury money appropriated to do the job enlists the private attorney to do. Thus, the job simply does not get done unless the services of a private attorney can be utilized.

The public, in Tennessee, allocates extensive responsibility to public prosecutors. The office always has been a creature of the ***Tennessee Constitution***, and the office holder's constitutional mandate is stated in the broadest terms. Even the statutorily prescribed duties [8] are subservient to constitutionally the mandated duty to be the **"Attorney for the State"** in his/her district.

Tennessee district attorneys general (unlike the Attorney General of the United States) have no up line superiors in a chain of command; they answer directly to the public constituency that elects them. A district attorney general, in Tennessee, holds office by virtue of the ***Tennessee Constitution***, Art.VI, §5, and no department of Tennessee government can circumscribe the function of the district attorney general nor supervise his/her duties.

Tennessee district attorneys general are part of the judicial department; they are independent, in the same sense and to the same degree as the Chief Justice of the Tennessee Supreme Court or, actually, more so since, unlike the Chief Justice, the district attorney general is one of one dependent

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[8] ***Tennessee Code Annotated*** §8-7-103.

on no other public officials for his/her post as "chief." District attorneys general, in Tennessee, have plenary authority to monitor all other public officeholders in their district and to interpose a check where malfeasance, misfeasance or nonfeasance is detected.

Tennessee district attorneys general have authority to seek a broad range of civil remedies in the name of the State of Tennessee, e.g., injunctions against corporations for abuse of their corporate charter. District attorneys general in Tennessee have authority over who (from among the private citizens), besides themselves, may bring civil actions on relation (i.e., in the name of) the State of Tennessee. Additionally Tennessee district attorneys general are vested, by virtue of their authority to act on relation of the State of Tennessee, with control over *parens patria* and quasi-sovereign powers of the State of Tennessee.

When triage decisions by public prosecutors are forced over long periods of time, misconduct that the public expects public prosecutors to prevent goes for so long without drawing retribution that segments of the public do not have a clue that certain conduct is misconduct. In practical terms, law is what is happening on the street and not what is written in the law books. Law without punishment (enforcement), in practical effect, is just a suggestion. When law, particularly law that condemns particular conduct as misconduct, is reduced to suggestion status, myriad connectors, designed by

legislation to hold society together as a healthy unit break, loose.

While Tennessee's district attorneys general may have a broader range of public duties and may be empowered to a greater degree than public prosecutors in some other states, all public prosecutors have duties the performance of which are essential to government. These responsibilities, when compared with duties of other public officeholders, are among the most important to the well-being of society.

To one degree or another, every public prosecutor is charged by his/her constituency to be the guardian of certain public interests that are going unprotected because fiscal and personnel constraints force the public prosecutors to abandon those interests.

Some of the interests routinely neglected include the backlash on the public when offenses related to intoxication, misfeasance, nonfeasance and malfeasance, enforcement of fiduciary responsibilities of officers of eleemosynary organizations, various types of restraints of trade and consumer fraud, vice, vandalism of property (e.g., graffiti), traffic violations, fighting, unlawful gambling, a multitude of *parens patria* and quasi-sovereign civil law issues and on and on.

When public prosecutors are forced to make decisions between, for instance, (1) tracking down and prosecuting serial rapists and murders, armed robbers, carjackers and (2) vandals defacing property with graffiti, speeders, loiterers,

users of controlled substances, spouses committing domestic crimes, misdemeanant (of all kinds) not inflicting personal injury and persons guilty of petit civil offenses, the first category understandably always wins out over the second category. Society pays a price when pubic prosecutors are forced to elect one category at the expense of the other.

Rooting out the societal effects of misconduct such as institutionalized frauds involving conflicts of interest routinely practiced in certain businesses and/or false advertising (e.g., prime rate fraud), perjury (especially if it occurs in civil depositions), tacit parallelism among competitors resulting in unlawful price fixing, institutionalized misfeasance in public office and driving under the influence of intoxicants remain what appear to the general public to be unsolvable societal problems. At least one reason for this sense of intractability is the fiscal incapacitation of public prosecutors.

The search for a solution is able to dominate the thinking of public prosecutors frustrated by the dilemma.

What if public prosecutors could enlist private attorneys who are experts in antitrust law to assist in a grand jury investigation concerning restraints of trade and, thereafter, appear as counsel with the public prosecutor in the ensuing civil or criminal case? What if the public prosecutor had access to private attorneys supplied by Mothers Against Drunk Driving to concentrate the attention of the public prosecutor on society's interests related to inadequate

enforcement of laws to keep drunk driving from being the problem it is? What if neighborhood watch groups were able to provide the public prosecutor with access to a private attorney devoted exclusively to assisting the public prosecutor relative to wrongful conduct in a particular neighborhood?

It is in the context of seeking a solution to the District Attorney's fiscal and personal constraints that the issue *sub judice* arose. The District Attorney, in conjunction with the Governor and the Attorney General of Tennessee, with respect to the particular area of responsibility of the District Attorney for which Petitioner's professional services were engaged, decided to increase the District Attorney's capacity by Petitioner's services, paid for with private funds.

The practical implication, as discussed more fully hereinafter, of the Court of Appeals' decision is to say to the Governor, the Attorney General and the District Attorney that using private attorneys as a solution to the triage problem is not permissible.

The duty of public prosecutors to abate public nuisances which threaten public morality, for all practical purposes, has gone so long ignored, because of what public prosecutors routinely say is lack of fiscal capacity, i.e., most often stated in terms of too few employees to allot to the effort, a lack of know-how sufficient to seriously face extremely well-financed adversaries and highly paid adversary counsel who have expertise defending financial interests at stake for the entrepreneur profiting off of the

nuisance. The loss to those who profit from the nuisances being abated often is greater than the entire public treasury budget of the District Attorney.

The ***Tennessee Constitution*** leaves to each district attorney general what means and methods to employ in effectuating his/her mandate. So, checked only by the ***United States Constitution*** and other parts of the ***Tennessee Constitution***, Tennessee district attorneys general are charged to use as much ingenuity as conceivable to get done what the public has entrusted them to do.

Persons involved in profitable, but impermissible, conduct often use lawsuits against their prosecutors as a tool to dissuade scrutiny. The decision of the Court of Appeals below, if it stands as new law, would be expected to cause professional liability insurance actuaries to re-examine coverage where the exposure comes in the context of suits for assisting a public prosecutor.

Public prosecutors are called to engage in civil litigation, which, if successful, will accomplish society-wide results apt to enjoin, directly or indirectly, highly profitable activities. This, likely, is a greater risk to an insurer than the ordinary private sector professional liability litigation.

The fact that public prosecutors would be at great risk encapsulates the essential for §1983 immunity. Absent that immunity, public prosecutors could not afford to risk the potential liability from performance of their duties. Absent the same immunity, a private attorney asked by the public

prosecutor to assist the public prosecutor could not afford the risk of personal liability such assistance would portend.

Consider recent attacks by young men assaulting young women in Central Park (just having a little fun, doing what boys naturally do with girls who provoke them) while police stood by unconcerned. What happens to the tone and tenor in society when citizens learn from experience that public prosecutors do not have time to be concerned about "minor" misconduct?

The vast majority of the citizens are not people prone to give a second thought to violating laws prohibiting serious felonies absorbing all or nearly all of the energy of public prosecutors. Because of fiscal incapacitation of the public prosecutors, law designed to control misconduct of most citizens is forced to be given little or no effective attention.

When long term prosecutorial inattention eliminates laws designed to make clear that, even though personally perceived by some citizens as economically or otherwise advantageous, the conduct is deemed by law to be "misconduct," the pragmatic effect is to cause what society has declared "misconduct" to lose its standing as misconduct. When this happens, the connectors those laws represent disconnect, and the societal stability provided by those connectors dissipates.

After a while, what society's laws have condemned as misconduct becomes normative, even though still unlawful. The public interest that such laws exist to protect

becomes unprotected, and the socially negative consequences that caused the law to become law in the first place become commonplace.

It is in this context that the District Attorney drafted Petitioner to assist the District Attorney in fulfilling certain of his duties to the public which, forced by fiscal and personnel constraints, would have remained neglected. The District Attorney stepped up, with the support of the Governor and the Attorney General of Tennessee, to overcome, in an effective way, these constraints.

There is no debate that the implicated laws, then and today, remain in full force. Those segments of the population, represented by Respondents, that profess a belief that the implicated laws had (or, at least, ought to have) been repealed reacted emotionally, even expressing outrage. To those persons, it is a good thing that the District Attorney is fiscally constrained from abating the subject nuisances, and it is a bad thing for the District Attorney to find means to overcome this constraint. Respondents and those who share Respondents' outrage can point to no legislative repeal of society's condemnation of the subject conduct as misconduct.

Many who are disappointed when public prosecutors overcome fiscal and personnel disabilities, by use of private attorneys, to abatement public nuisances to protect public morality would be delighted for the same public prosecutor to overcome the same disabilities if the public nuisance involved air pollution from industrial discharge or secondary smoke

from cigarettes, use of abrasive chemicals to sore the ankles of Tennessee Walking Horses or other animal cruelty issues.

It is no more the place of a public prosecutor who is a member of the NRA to refuse to enforce gun laws because of his personal belief that the gun laws violate the Second Amendment than it is the place of a public prosecutor who is a member of the ACLU to refuse to enforce ant-obscenity laws violate the First Amendment.

This case has nothing to do with the nature of the public nuisance or what other use a public prosecutor makes of the private attorney resource. This case is all about whether public prosecutors are limited to using only private attorneys who are willing to assist public prosecutors knowing that the §1983 immunity which shields the public prosecutor does not shield the private attorney. No private attorney reasonably could take such a risk.

Knowing that ordinary citizens take their cues as to what is and what is not condemned by law from what is happening in the street and not from what is written in the law books, understanding the outrage of Respondents is not difficult. This singles out another aspect of the problem.

The part of the public that concluded that the conduct condemned as unlawful was normative and, based on this erroneous conclusion took up the conduct as lifestyle, with some justification, feel deceived by the result of the fiscally-forced inaction of public prosecutors.

The public policy flowing from the new law created

by the Court of Appeals' transcends the particular public nuisance laws invoked by the initiative of the District Attorney in this case.

The larger question pervades the panoply of laws which the District Attorney, for all practical purposes, has been forced to nullify.

The baseline question at hand is simple. Can a public prosecutor, taking all of the precautions taken by the District Attorney in this case (i.e., the "even though" language, in Petitioner's statement of the question), turn to the private sector, to obtain expertise and personnel funded by the private sector, to make it possible for the public prosecutor to break the gridlock and, thereby, to convert, from law book academics to reality in the street, that conduct condemned by the legislature as misconduct?

If the trend of public prosecutors to use such a private sector resource to address the problem can proceed, the problem might be solved. If not, the status quo should be expected.

The Court of Appeals requires private attorneys to leave the private sector (i.e., must become a "public official") in order to gain access to §1983 immunity.

Understanding **what this case does not present for decision** by this Court is as important as isolating what is presented. Particularly, this case does:

i). **NOT** involve how any particular State must determine whether and to what

extent, if at all, public prosecutors in that jurisdiction may or may not employ private sector resources to overcome the public prosecutor triage problems;

ii). **NOT** involve what decision any State shall make as to which, if any, of the laws public prosecutors in that jurisdiction have routinely been forced to neglect should be resurrected, should be amended or, even, be repealed;

iii). **NOT**involve the necessity to review or decide any constitutional rights of any parties; and

iv). **NOT** involve whatever, if any, special due process issues considerations are presented where a private attorney is enlisted by a public prosecutor to assist the public prosecutor by and/or with criminal prosecutions, i.e., Respondents' District Court complaints allege that the Petitioner violated §1983 by assisting the District Attorney in preparation for and prosecution of civil nuisance abatement cases only.

This Court deciding, with the precautions taken by the Governor, Attorney General and District Attorney below, that private sector compensation of a private attorney like-situated

as Petitioner does not negate access to the same §1983 immunity as the District Attorney and Assistant District Attorneys does no more than decide that, under such circumstances, a public prosecutor, may avail himself/herself of access to private sector funding and personnel.

While this is a sharply defined decision, it is one of importance because the absence of such a decision by this Court, for all practical purposes, eliminates private sector funding of a private attorney to assist public prosecutor, even with precautions taken in this case.

CONCLUSION

If the Court sees fit to grant this petition, Petitioner will request that the decision of the Court of Appeals be reversed and the decision of the District Court be reinstated. However, the new rule of law pronounced by the Court of Appeals below has profound enough implications that the decision deserves review by this Court even if this Court ultimately decides to affirm the Court of Appeals below.

Larry E. Parrish, P.C.
Attorney for Petitioner

By: Larry E. Parrish
Larry E. Parrish

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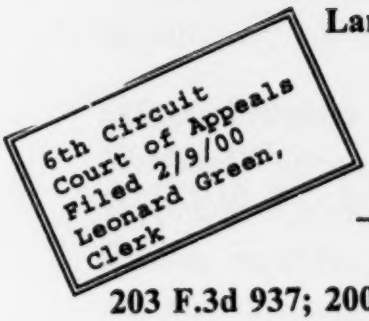
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Steven Craig Cooper; et al.,
Plaintiffs-Appellants,

v.

Larry E. Parrish; et al.,
Defendants-Appellees.



No. 98-6324

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203 F.3d 937; 2000 U.S. App. LEXIS 1718; 2000 FED App. 0047P (6th Cir.)

February 9, 2000, Filed

PRIOR HISTORY: Appeal from the United States District Court for the Western District of Tennessee at Memphis. Nos. 97-02625; 97-02626. Bernice B. Donald, District Judge.

DISPOSITION: **AFFIRMED** district court's dismissal of the federal claims against the defendants Alissandratos, Pierotti, Weirich, Nichols, Glankler, and Simmons. REVERSED district court's dismissal of the claims against Parrish and REMANDED claims against him to the district court for further proceedings consistent with this opinion. REVERSED district court's dismissal of the state law

claims against all the defendants and REMANDED these claims to the district court for further proceedings consistent with this opinion. VACATED district court's dismissal of the plaintiffs' claims for injunctive relief on Younger abstention grounds and REMANDED those claims to the district court for further proceedings consistent with this opinion.

CORE TERMS: prosecutor, district attorney, absolute immunity, qualified immunity, nightclub, chancellor, restraining orders, temporary, public nuisance, immunity, ex parte, state law, constitutional rights, nuisance, judicial capacity, forfeiture, common law, abstention, immune, law enforcement, customers, public official, investigator, seizure, legal advice, lawsuit, prosecutorial immunity, quasi-judicial, injunctive relief, judicial officer

COUNSEL: ARGUED: John E. Herbison, Nashville, Tennessee, for Appellants.

David Wade, MARTIN, TATE, MORROW & MARSTON, Memphis, Tennessee, for Appellees.

ON BRIEF: John E. Herbison, Nashville, Tennessee, Robert S. Catz, Nashville, Tennessee, for Appellants.

David Wade, MARTIN, TATE, MORROW & MARSTON, Memphis, Tennessee, David E. Caywood, CAUSEY,

CAYWOOD, TAYLOR, McMANUS & BAILEY, Memphis, Tennessee, Mary M. Bers, Heather C. Ross, OFFICE OF THE ATTORNEY GENERAL, Nashville, Tennessee, Larry E. Parrish, LAW OFFICES OF LARRY PARRISH, Memphis, Tennessee, Robert L. Hutton, GLANKLER BROWN, PLLC, Memphis, Tennessee, for Appellees.

JUDGES: Before: RYAN, MOORE, and GIBSON,[1] Circuit Judges.
OPINION BY: KAREN NELSON MOORE

OPINION:

KAREN NELSON MOORE, Circuit Judge.

This case allegedly involves an attempt on the part of a state court chancellor, three state prosecutors, two state investigators, and a private attorney to shut down several nightclubs that feature nude dancing in Memphis, Tennessee. Plaintiffs appeal the district court's decision to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) their *42 U.S.C. § 1983* and related state law claims

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[1]* The Honorable John R. Gibson, Circuit Judge of the United States Court of Appeals for the Eighth Circuit, sitting by designation.

against all defendants on absolute immunity grounds. Plaintiffs also appeal the district court's decision to invoke Younger abstention and dismiss without prejudice their request for prospective injunctive relief.

Plaintiffs allege that the defendants violated their First Amendment, Fourth Amendment, and Fourteenth Amendment procedural and substantive due process rights. They allege that the chancellor violated their constitutional rights when he gave the prosecutors ex parte legal advice. Plaintiffs allege that the prosecutors and the private attorney violated their constitutional rights when they engaged in ex parte communications with the chancellor, filed public nuisance and civil forfeiture complaints, sought temporary restraining orders, executed the restraining orders, and, in the case of one of the prosecutors, swore to the truth of the allegations in the complaints. Finally, plaintiffs allege that the two state investigators violated their constitutional rights when they executed the restraining orders.

For the reasons stated below, we AFFIRM the district court's dismissal of the claims against the chancellor, the three state prosecutors, and the two state investigators in this case. The district court, however, improperly dismissed the claims against Larry Parrish because he is not eligible to receive absolute or qualified immunity. Therefore, we REVERSE the district court's dismissal of the claims against Parrish and REMAND the claims against him to the

district court for further proceedings consistent with this opinion. We also REVERSE the district court's dismissal of the state law claims against all the defendants and REMAND these claims to the district court for further proceedings consistent with this opinion. Finally, we VACATE the district court's dismissal of the plaintiffs' claims for injunctive relief on Younger abstention grounds and REMAND these claims to the district court for further proceedings consistent with this opinion.

I. BACKGROUND

Plaintiffs set forth their claims against these defendants in two separate complaints, which were filed in cases that the district court consolidated on August 27, 1997. For present purposes, we must accept as true all well-pleaded, nonconclusory allegations contained in the two complaints. *Buckley v. Fitzsimmons, 509 U.S. 259, 261, 125 L. Ed. 2d 209, 113 S. Ct. 2606 (1993).*

Plaintiffs allege that as early as December of 1995, Larry Parrish, a private attorney practicing law in Tennessee, and John Pierotti, who at the time was the District Attorney General for the Thirtieth Judicial District of Tennessee, agreed to investigate certain nightclubs in the Memphis area. District Attorney General Pierotti subsequently directed Amy Weirich and Jennifer Nichols, two of his assistant district attorneys, to work on the case. On July 7,

1996, Larry Parrish and the three prosecutors from the district attorney general's office met with D.J. Alissandratos, Chancellor for the Thirtieth Judicial District of Tennessee. This was the first of several meetings in which Chancellor Alissandratos allegedly gave Parrish and the three prosecutors "ex parte legal advice as to how the pleadings and/or supporting documentation in such lawsuits [involving the nightclubs] should be drafted so as to ensure issuance of ex parte orders to close the Plaintiffs' nightclubs or showbars." Joint Appendix ("J.A.") at 495 (Cooper Am. Compl. P 30).

On July 11, 1996, Assistant District Attorneys Weirich and Nichols, along with Larry Parrish, who earlier that day had been sworn in as a "Special" Assistant District Attorney, filed several complaints in Shelby County Chancery Court in which they alleged that nightclubs in the Memphis area should be shut down because they were in violation of Tennessee's public nuisance statute. Although District Attorney General Pierotti was not listed as counsel in the complaints, as relator he did vouch for the truth of the factual allegations contained in the complaints.

Once Parrish and the other prosecutors had filed the complaints, they asked Chancellor Alissandratos to issue several temporary restraining orders pursuant to Tenn. Code Ann. § 29-3-105 (Michie 1999). The temporary restraining orders purported to authorize Mark Glankler, an investigator

in the district attorney general's office, and John Simmons, an agent of the Tennessee Bureau of Investigation, to enter and seize eight of the nightclubs that featured nude dancing in Memphis. On the night of July 11, 1996, at approximately 6:00 p.m., officers entered each of the eight nightclubs and announced that the club was being seized. The employees and customers inside the nightclubs were detained by law enforcement officers for periods of time ranging from one to five hours. The officers required the club occupants to produce identification, which was photocopied or recorded. These individuals were then served subpoenas that required them to report to the district attorney general's office and provide sworn statements.

Law enforcement officers also seized the business offices of Southern Entertainment Management Company, a company that conducted various business functions related to three of the nightclubs. The eight nightclubs and the Southern Management Business offices remained closed and in the custody of the district attorney general's office for fourteen days; thus, the owners did not regain custody of their respective properties until the restraining orders had expired.

On December 10, 1996, the Shelby County district attorney general's office obtained criminal indictments from a grand jury that charged Steven Cooper, who owned three of the nightclubs, with presenting obscene live

performances, promoting prostitution, public indecency, and importing and distributing obscene material. The civil public nuisance action against Cooper and other defendants was removed to federal court but ultimately remanded back to the Chancery Court of Shelby County. On March 14, 1997, William Gibbons, who had replaced Pierotti as the District Attorney General for the Thirtieth District of Tennessee, voluntarily nonsuited the civil public nuisance action, which was dismissed without prejudice. Gibbons simultaneously notified the Criminal Court of Shelby County that the claims raised in the civil nuisance actions would be included in the criminal case that at the time was pending against Cooper.

On July 11, 1997, the plaintiffs in the present case filed two separate complaints in federal district court. The district court consolidated the two cases - Cooper v. Parrish and Holland v. Parrish - on August 27, 1997. Plaintiff Steven Cooper and his businesses brought a *42 U.S.C. § 1983* action alleging that Defendants Alissandratos, Parrish, Pierotti, Weirich, Nichols, Glankler, and Simmons were liable in their individual capacities for the roles these defendants played in filing the public nuisance suit and seizing his property. Cooper alleged that these defendants violated his First Amendment, Fourth Amendment, and Fourteenth Amendment procedural and substantive due process rights, and he alleged that these defendants had engaged in a civil conspiracy under Tennessee common

law, had conspired to injure his business under Tennessee common law, and had engaged in an abuse of process. Finally, Cooper asked the district court permanently to enjoin William Gibbons, the current district attorney general in Shelby County, from interfering with his businesses without giving him prior notice and an opportunity to be heard. J.A. at 508 (Cooper Am. Compl. P 85).

Plaintiff Amanda Holland, who was an employee at one of the nightclubs, also brought a § 1983 suit against Parrish, Pierotti, Glankler, Simmons, and various unnamed law enforcement officers. Plaintiffs named in the Holland complaint also included employees and a delivery person who was detained by law enforcement officers on the night of the raid. Holland alleged the same four constitutional violations listed in Cooper's amended complaint, and she asked the district court to certify her case as a plaintiff class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(1), (2), and/or (3).

Chancellor Alissandratos eventually filed a motion to dismiss all of the claims against him in the Cooper complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) on various grounds including that he was entitled to absolute judicial immunity. Parrish, Pierotti, Weirich, Nichols, Glankler, and Simmons also moved to dismiss the claims against them pursuant to Rule 12(b)(6) on absolute and qualified immunity grounds. On May 5, 1998, the

district court dismissed the claims against Chancellor Alissandratos, J.A. at 627 (Dist. Ct. Order), and on August 26, 1998, the district court dismissed the claims against the other defendants. *Cooper v. Parrish, 20 F. Supp. 2d 1204 (W.D. Tenn. 1998).* Plaintiffs now appeal the district court's dismissal of their claims.

II. ANALYSIS

We review de novo a dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted, construing the complaint in the light most favorable to the plaintiffs and accepting as true all well-pleaded factual allegations. *Columbia Natural Resources, Inc. v. Tatum, 58 F.3d 1101, 1109 (6th Cir. 1995),* cert. denied, *516 U.S. 1158, 134 L. Ed. 2d 189, 116 S. Ct. 1041 (1996).* Dismissal is not appropriate unless it appears beyond doubt that plaintiffs can prove no set of facts in support of their claims that entitle them to relief. *Conley v. Gibson, 355 U.S. 41, 45-6, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957).*

A. Absolute Immunity for Federal Claims

The district court dismissed the § 1983 claims against all of the defendants who had been named in their individual capacities on grounds that these defendants were entitled to absolute immunity. The Supreme Court has adopted a

"functional approach" to determine whether an official is entitled to absolute immunity. *Buckley, 509 U.S. at 269.* This approach looks to "the nature of the function performed, not the identity of the actor who performed it." *Id.* (quoting *Forrester v. White, 484 U.S. 219, 229, 98 L. Ed. 2d 555, 108 S. Ct. 538 (1988)).* The Court has also explained that officials who assert an absolute immunity defense bear the burden of demonstrating that they are entitled to absolute immunity given the function that they have performed. *Burns v. Reed, 500 U.S. 478, 486, 114 L. Ed. 2d 547, 111 S. Ct. 1934 (1991).*

1. Absolute Judicial Immunity

Plaintiffs argue that Chancellor Alissandratos is not entitled to absolute immunity because he engaged in unethical conduct and acted as a de facto counsel when he gave prosecutors "ex parte legal advice as to how the pleadings and/or supporting documentation in such lawsuits [involving the nightclubs] should be drafted so as to ensure issuance of ex parte orders to close the Plaintiffs' nightclubs or showbars." J.A. at 495 (Cooper Am. Compl. P 30). Judicial officers generally are absolutely immune from civil suits for monetary damages under § 1983 for their judicial actions. *Mireles v. Waco, 502 U.S. 9, 9-10, 116 L. Ed. 2d 9, 112 S. Ct. 286 (1991).* The rationale for granting judicial officers absolute immunity when they act in their judicial capacities is that judicial officers should be free to make

controversial decisions and act upon their convictions without fear of personal liability. *Stump v. Sparkman, 435 U.S. 349, 355-56, 55 L. Ed. 2d 331, 98 S. Ct. 1099 (1978).*

There are two situations, however, in which judicial officers are not absolutely immune from potential liability. "First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." *Mireles, 502 U.S. at 11-12* (emphasis in original) (citations omitted); see also *Ireland v. Tunis, 113 F.3d 1435, 1440* (6th Cir.), cert. denied, *522 U.S. 996, 118 S. Ct. 560, 139 L. Ed. 2d 401 (1997).* We therefore must consider whether Chancellor Alissandratos's actions were taken in his judicial capacity and whether his actions were taken in the complete absence of all jurisdiction.

The Supreme Court has explained that courts should focus on the "nature" and "function" of an act, and not the act itself, when deciding whether certain actions were taken in a judge's judicial capacity. *Mireles, 502 U.S. at 13* (quoting *Stump, 435 U.S. at 362).* This functional approach typically turns on two factors. First, a court must determine whether an act is related to those general functions that are normally performed by a judicial officer. *Stump, 435 U.S. at 362.* Second, a court must assess whether the parties expected to deal with the judicial officer in the officer's

judicial capacity. *Id.* Plaintiffs in the present case argue that Chancellor Alissandratos's ex parte contact with the district attorney general's office and his legal advice regarding ways that the prosecutors could improve their complaints are prosecutorial in nature and therefore are not related to those general functions that are normally performed by a chancellor.

In *Barnes v. Winchell, 105 F.3d 1111, 1115-22 (6th Cir. 1997),* we had the opportunity to address what constitutes a prosecutorial as opposed to a judicial act in the absolute immunity context. We determined that a municipal court judge had acted within his judicial capacity even though he allegedly had directed two individuals to change charges in a criminal complaint and had helped them prepare one or more of the complaints. Although the judge's conduct may have been improper under state law, we still explained that "absolute judicial immunity extends to a judge who, in exercising his or her authority, commits 'grave procedural errors.'" *Id. at 1120* (quoting *Stump, 435 U.S. at 359).* Because the parties independently brought the case before the judge, and because the improper conduct was related to the general judicial functions that are involved in receiving and presiding over a criminal case, we concluded that the judge was acting in his judicial capacity when he changed the criminal charges and helped the individuals prepare their criminal complaint. *Id.* at 1121.

Like the municipal judge in Barnes, Chancellor Alissandratos was acting in his judicial capacity when he engaged in ex parte contact with the prosecutors and gave the prosecutors legal advice regarding ways that they could improve their case. As Chancellor Alissandratos has pointed out, Tennessee Rule of Civil Procedure 65.03(1) authorizes a judicial officer to issue a restraining order prior to the commencement of legal action without notice to an adverse party. Moreover, Rule 65.03(2) provides that "[a] restraining order may be granted only by a judge of the court in which the action is pending or is to be filed." Because Chancellor Alissandratos is a judge of the court in which the public nuisance action against the nightclubs was ultimately filed, he was acting within his judicial authority when he met with the prosecutors from the district attorney general's office for the purpose of deciding whether to grant the temporary restraining orders.

Furthermore, even though Chancellor Alissandratos's participation in ex parte communications with the prosecutors in which he allegedly discussed tactics and planning of the lawsuits may have been improper under Tennessee law, see Tenn. Sup. Ct. R. 10, Cannon 3.B.(7) (1998) (explaining that a judge shall not engage in ex parte communications with one of the parties unless "the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication"), these communications were nonetheless

related to his general judicial functions, which include the authority to issue an ex parte restraining order prior to the commencement of a lawsuit. Tenn. R. Civ. P. 65.03. Indeed, even if we assume that Alissandratos committed "grave procedural errors" when he gave the ex parte legal advice, he still was acting within his judicial capacity because his conduct is related to those general judicial functions that a chancellor would normally perform. See *Barnes, 105 F.3d at 1120.*

We also must consider whether Chancellor Alissandratos's actions were taken in the complete absence of all jurisdiction. *Stump, 435 U.S. at 362.* The Supreme Court has instructed that "[a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" *Id. at 356-57* (quoting *Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 351, 20 L. Ed. 646 (1871))* (footnote omitted). We have interpreted this language to mean that there is sufficient jurisdiction for immunity purposes where a court has some subject matter jurisdiction over the underlying legal actions. *Barnes, 105 F.3d at 1122;* see also *Ireland, 113 F.3d at 1441* ("If the matter upon which the judge acts is clearly outside the subject matter jurisdiction of the court over which the judge presides, the act is done in the clear absence of all jurisdiction.").

In this case, Chancellor Alissandratos had subject matter jurisdiction over the public nuisance action that the district attorney general ultimately brought against the nightclubs. Tenn. Code Ann. § 29-3-102 (1998) ("Jurisdiction is hereby conferred upon the chancery, circuit, and criminal courts to abate the public nuisances defined in [Tennessee Code Annotated] § 29-3-101, upon petition in the name of the state, upon relation of the attorney general, or any district attorney general."); see also Tenn. Code Ann. § 29-3-105 (stating that a chancellor has the authority to "award a temporary writ of injunction, enjoining and restraining the further continuance of such nuisance, and the closing of the building or place wherein the same is conducted."). Thus, even though Chancellor Alissandratos may have acted in excess of his authority when he met with the prosecutors from the district attorney general's office and gave them ex parte legal advice, his actions for judicial immunity purposes were not taken in clear absence of all jurisdiction.

Because the factual allegations in this case describe a situation where Chancellor Alissandratos was acting in his judicial capacity and within the realm of his subject matter jurisdiction, he is absolutely immune from the charges that he violated the plaintiffs' constitutional rights when he engaged in meetings with the prosecutors. Accordingly, the district court properly dismissed these charges on grounds that the plaintiffs have failed to state a claim against

Chancellor Alissandratos upon which relief can be granted.

2. Absolute Prosecutorial Immunity

District Attorney General Pierotti and Assistant District Attorneys Weirich and Nichols claim that the district court properly granted their Rule 12(b)(6) motions to dismiss because they are entitled to absolute prosecutorial immunity. Absolute prosecutorial immunity, like absolute judicial immunity, is a common law principle that shields a prosecutor from § 1983 liability. *Imbler v. Pachtman, 424 U.S. 409, 430-31, 47 L. Ed. 2d 128, 96 S. Ct. 984 (1976).* The Supreme Court has endorsed a "functional" approach for determining whether an official is entitled to absolute prosecutorial immunity, explaining that a court should look to "the nature of the function performed, not the identity of the actor who performed it." *Forrester, 484 U.S. at 229;* see also *Ireland, 113 F.3d at 1443.*

This functional approach focuses on whether the prosecutor's activities are "intimately associated with the judicial phase of the criminal process." *Imbler, 424 U.S. at 430.* Those acts that occur in the course of the prosecutor's role as an advocate for the state, e.g., acts taken to prepare for the initiation of judicial proceedings or to prepare for trial, are protected by absolute immunity. *Buckley, 509 U.S. at 273;* see also *Ireland, 113 F.3d at 1444-45.* By contrast, a prosecutor who "performs the investigative functions

normally performed by a detective or police officer" such as "searching for the clues and corroboration that might give him probable cause to recommend that a suspect be arrested" is entitled only at most to qualified immunity. *Buckley, 509 U.S. at 273.*

Plaintiffs argue that the prosecutors in this case are not entitled to absolute immunity because they were pursuing a civil action when they prepared and filed the public nuisance and civil forfeiture complaints. Although the Supreme Court has yet to address directly whether prosecutors are entitled to absolute immunity when they act as advocates in the course of a civil rather than a criminal action, several other courts of appeals have determined that prosecutors are protected by absolute immunity "when their duties are functionally analogous to those of a prosecutor's, regardless of whether those duties are performed in the course of a civil or criminal action." *Schrob v. Catterson, 948 F.2d 1402, 1411 (3rd Cir. 1991);* see also *Mendenhall v. Goldsmith, 59 F.3d 685, 691* (7th Cir.) (explaining that the fact that "the alleged misconduct here arose in the context of a civil proceeding with a law enforcement purpose does not render absolute immunity inappropriate. The essential inquiry is whether [the prosecutor] was functioning in an enforcement role analogous to that of a prosecutor.") (citations and footnote omitted)), cert. denied, *516 U.S. 1011, 133 L. Ed. 2d 492, 116 S. Ct. 568 (1995).* We agree that the prosecutors in this case may still be

absolutely immune even though the alleged constitutional violations occurred when the officials were pursuing a civil action. Indeed, as long as the prosecutors were functioning in an enforcement role and acting as advocates for the state in initiating and prosecuting judicial proceedings, they are entitled to an absolute immunity defense.

Plaintiffs argue that the prosecutors have not shown that they were functioning as advocates and therefore are not entitled to absolute immunity when they (1) participated in ex parte communications with Chancellor Alissandratos; (2) prepared and decided to file the public nuisance and civil forfeiture complaints; (3) sought the temporary restraining orders; (4) participated in the forcible occupation of the nightclubs; and (5) in the case of District Attorney General Pierotti, decided to vouch for the truth of the allegations in the complaints.

The challenge to the prosecutors' participation in ex parte communications with Chancellor Alissandratos is easily disposed of. In their complaint, plaintiffs allege that Pierotti, Weirich, and Nichols met with Alissandratos "for the purpose of privately (and unethically) engaging in ex parte communications regarding lawsuits which were to be filed later related to nightclubs or showbars offering nude or semi-nude expressive dancing." J.A. at 494 (Cooper Am. Compl. P 28) (second emphasis added). Plaintiffs do not allege that the prosecutors were performing any

investigative functions that are normally performed by a detective or police officer when they engaged in the ex parte communication with Chancellor Alissandratos. Instead, these allegations, even when construed in the light most favorable to the plaintiffs, simply describe a situation where these prosecutors as advocates were meeting with Chancellor Alissandratos to discuss the public nuisance lawsuit and temporary restraining orders that they had decided to pursue.

Several of the other allegations involving the prosecutors are similar to allegations made in *Ireland, 113 F.3d at 1444-45,* a case in which we held that state prosecutors were entitled to absolute prosecutorial immunity for preparing and deciding to file a criminal complaint, seeking an arrest warrant, and presenting the charging document to a judge. In Ireland, the plaintiff had failed to allege any conduct on the part of the prosecutors that could be characterized as "investigative activities undertaken antecedent to the [prosecutors'] decision to file criminal charges." *Id. at 1447.* We held that the prosecutors were entitled to absolute immunity notwithstanding the political motives that allegedly led the prosecutors to pursue the criminal charges because "[a] prosecutor's decision to file a criminal complaint and seek an arrest warrant and the presentation of these materials to a judicial officer fall

squarely within the aegis of absolute prosecutorial immunity." *Id. at 1446.*

Like the prosecutors in Ireland, the prosecutors in the present case are entitled to absolute immunity for their decision to file the public nuisance and civil forfeiture complaints and for their decision to seek the temporary restraining orders. Plaintiffs allege that Parrish, Weirich, and Nichols "filed on behalf of the State of Tennessee on relation of the Defendant Pierotti a series of prolix pleadings against various in rem and in personam Defendants, including the instant Plaintiffs, alleging the existence of public nuisances." J.A. at 496 (Cooper Am. Compl. P 34). Plaintiffs also alleged that "upon filing of the complaints referenced in P 34 above, the Defendants Pierotti, Parrish, Weirich and Nichols importuned the Defendant Alissandratos to issue an ex parte directive in each case, which was captioned 'TEMPORARY RESTRAINING ORDER'. " J.A. at 497 (Cooper Am. Compl. P 36). Once again, the plaintiffs have failed to allege that Pierotti, Weirich, and Nichols engaged in any investigative activities. Because the prosecutors were functioning squarely within their capacities as advocates for the state when they filed the public nuisance and civil forfeiture complaints and persuaded Chancellor Alissandratos to issue the temporary restraining orders, they are entitled to absolute prosecutorial immunity.

District Attorney General Pierotti and Assistant District Attorneys Weirich and Nichols are also protected by absolute immunity for the role that they allegedly played in the seizure of property and detention of persons at the nightclubs. Plaintiffs allege that Weirich and Nichols "participated in the unlawful forcible occupation of the Plaintiffs' properties or directed or supervised law enforcement personnel in effecting the challenged seizures." J.A. at 498 (Cooper Am. Compl. P 40). Plaintiffs also allege that "the events that ensued at each nightclub . . . resulted directly from the supervision, direction and control of the Defendants Parrish and Pierotti." J.A. at 499 (Cooper Am. Compl. P 41). We have held that an official is entitled to absolute quasi-judicial immunity when that official acts pursuant to a valid court order because the act of "enforcing or executing a court order is intrinsically associated with a judicial proceeding." *Bush v. Rauch, 38 F.3d 842, 847 (6th Cir. 1994)* (citations omitted). Plaintiffs in this case therefore cannot sustain their claims relating to the seizure of the nightclubs unless they allege that the prosecutors engaged in conduct that exceeds the scope of the temporary restraining orders.

Plaintiffs allege that the prosecutors exceeded the scope of the temporary restraining orders when they detained those customers who were at the nightclubs and seized property that was not explicitly identified in the temporary restraining orders. Even if we assume that the plaintiffs

have standing to challenge the treatment of their customers, an issue on which we express no opinion, we still believe that the language in the temporary restraining orders is broad enough to cover both the temporary detention of the customers at the nightclubs and the seizure of the business offices of Southern Entertainment Management Company, a company that conducted various business functions related to three of the nightclubs. The temporary restraining orders authorized the prosecutors to restrain all "parties, proprietors, putative owners, employees, agents . . . [and] all other persons of any kind or at any place from devaluing, removing, diminishing in quality or quantity, destroying, deleting, amending or altering the Res." J.A. at 349 (Temporary Restraining Order) (emphasis in original). The temporary restraining orders also authorized the prosecutors to seize "all personal property of any type or kind . . . whether located on or within the Place or some other location (including, but not limited to, off-premises corporate headquarters, off-premises storage locations, and depositories) used in any way in connection with the operation, conduct and/or maintaining the real property." J.A. at 349 (Temporary Restraining Order). Not only do the temporary restraining orders authorize law enforcement officials to restrain any person who could devalue, remove, or diminish the property - a category that could reasonably include those customers who were at the nightclubs on the night of the raid - but they also authorize these officials to seize property that is in any way connected to the operation

of the nightclubs - a category that certainly includes the Southern Entertainment Management Company. Thus, the prosecutors did not engage in conduct that exceeded the scope of the temporary restraining orders, and they are entitled to absolute quasi-judicial immunity for their participation in the seizure of property and detention of persons at the nightclubs.

Finally, we must determine whether District Attorney General Pierotti is absolutely immune for swearing to the truth of the factual allegations in the public nuisance and civil forfeiture complaints. Plaintiffs allege that "each of these pleadings was sworn on the oath of the Defendant Pierotti, who vouched for the truth of the averments of the pleadings." J.A. at 496 (Cooper Am. Compl. P 34). The allegations in the present case are directly analogous to allegations made in *Kalina v. Fletcher, 522 U.S. 118, 118 S. Ct. 502, 509, 139 L. Ed. 2d 471 (1997),* a case in which the Supreme Court held that a prosecutor who vouched for the truth of the contents of a criminal complaint in order to obtain an arrest warrant was only entitled to assert qualified immunity. See also *Ireland, 113 F.3d at 1447-48* (holding that a prosecutor or investigator who vouches for truth of allegations in a complaint was not entitled to absolute immunity).

Pierotti attempts to distinguish Kalina by pointing to the Court's statement that "neither federal nor state law made

it necessary for the prosecutor [in Kalina] to make that certification [in which she swore to the truth of the allegations in a complaint]." *Kalina, 118 S. Ct. at 509.* Pierotti argues that he is entitled to absolute immunity because Tennessee Code Annotated § 29-3-102 specifically authorizes a district attorney general, as well as various other officials or ten or more citizens, to bring a public nuisance suit on relation for the state. Section 29-3-102 does not, however, require that a district attorney general swear to the truth of allegations contained in a complaint. Pierotti was not exercising his professional judgment as a prosecutor when he vouched for the truth of allegations in the complaints; instead, he performed "an act that any competent witness might have performed." *Kalina, 118 S. Ct. at 509.* Because the Supreme Court has specifically held that "testifying about facts is the function of the witness, not of the lawyer," Pierotti was not acting as an advocate when he swore to the truth of the allegations in the public nuisance and civil forfeiture complaints, and he therefore is not protected by absolute immunity for this conduct. *Id.* at 510.

3. Absolute Immunity for Investigators

Plaintiffs also argue that the district court improperly dismissed their claims against Mark Glankler, an investigator in the district attorney general's office, and John Simmons, an agent of the Tennessee Bureau of

Investigation, on absolute immunity grounds. In their complaint, plaintiffs allege that "Glankler and Simmons participated in the unlawful forcible occupation of the Plaintiffs' properties or directed or supervised law enforcement personnel in effecting the challenged seizures." J.A. at 498 (Cooper Am. Compl. P 40).

Law enforcement officers are entitled to absolute immunity as long as they are able to show that they were performing a quasi-judicial function. *Bush, 38 F.3d at 847.* "Quasi-judicial immunity extends to those persons performing tasks so integral or intertwined with the judicial process that these persons are considered an arm of the judicial officer who is immune." *Id.* Law enforcement officials are entitled to absolute quasi-judicial immunity when they act pursuant to a valid court order. *Id. at 847-48.*

Glankler and Simmons have shown that they were acting pursuant to the temporary restraining orders when they detained those customers who were at the nightclubs and seized property that was not explicitly identified in the temporary restraining orders. As we explained above, the language in the temporary restraining orders is broad enough to cover the detention of the customers at the nightclubs and the seizure of the Southern Entertainment Management Company. Glankler and Simmons therefore did not engage in conduct that exceeded the scope of the

temporary restraining orders, and they are entitled to absolute immunity for the role they played in the execution of the restraining orders.

4. Absolute Immunity for Parrish

Plaintiffs also argue that the district court improperly dismissed their claims against Larry Parrish, a private attorney licensed to practice in Tennessee who was informally sworn in as a "Special" Assistant District Attorney on July 11, 1996, because Parrish was not acting as an official government officer and therefore is not entitled to absolute immunity. Private attorneys who allegedly engage in unconstitutional conduct while acting under color of state law are not entitled to immunity. See *Vector Research, Inc. v. Howard & Howard Attorneys P.C., 76 F.3d 692, 699 (6th Cir. 1996)* (denying private attorneys qualified immunity in § 1983 action). Thus, Parrish is not entitled to absolute immunity unless he can show that he was acting as a public official when he allegedly engaged in the unconstitutional conduct. See id.

We conclude that Parrish was not acting as a public official when he allegedly engaged in the conduct at issue in this case because he was never properly appointed to serve as an assistant district attorney. See *Tennessee v. Culbreath, 1999 Tenn. Crim. App. LEXIS 191, 1999 WL 134685,* *1-2 (March 9, 1999 Tenn.Crim.App.), cert.

granted, Sept. 13, 1999 (Tenn.). In Culbreath, a case that involves the prostitution and obscenity charges that have been brought against several of the plaintiffs in the present case,[1]n the Tennessee Court of Criminal Appeals disqualified Parrish from serving as a prosecutor on grounds that he had never been properly appointed to act on behalf of the state. As the court explained:

We find no statutory authority which would allow the District Attorney General to informally appoint Parrish to act on behalf of the state from December 1995 until he took an oath of office in July 1996. Nor do we find any statutory authority authorizing the District Attorney General to formally appoint Parrish in July 1996 as a 'Special Assistant District Attorney' with the understanding that Parrish would seek compensation from private sources.

Id. at *4. Furthermore, the court determined that Parrish was never properly appointed by the Governor as additional counsel to the District Attorney General pursuant to Tennessee Code Annotated § 8-6-106 because the method used to compensate Parrish - he had been paid over $300,000 by a private non-profit organization that supports

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[1]n We cite Cullbreath simply as an authority on Tennessee law. Thus, we need not and do not consider whether Parrish is precluded from arguing that he was properly appointed to serve as a "Special" Assistant District Attorney after the decision in the Cullbreath case.

law enforcement efforts in opposition to obscenity - nullified his appointment. *Id.*

We agree with the Tennessee court's determination that District Attorney General Pierotti was not acting pursuant to statutory authority when he appointed Parrish to serve as his "Special" Assistant District Attorney on July 11, 1996. Because Parrish does not qualify as a public official and is not entitled to absolute prosecutorial or quasi-judicial immunity, the district court erred when it dismissed the plaintiffs' claims against him on absolute immunity grounds.

B. Qualified Immunity for Federal Claims

Defendants Pierotti and Parrish also claim that they are entitled to qualified immunity. We have adopted a two-part test for determining whether public officials are entitled to qualified immunity. *Brennan v. Township of Northville, 78 F.3d 1152, 1154 (6th Cir. 1996).* First, we must determine whether plaintiffs have alleged a deprivation of a constitutionally protected right at all. *County of Sacramento v. Lewis, 523 U.S. 833, 118 S. Ct. 1708, 1714 n. 5, 140 L. Ed. 2d 1043 (1998); Brennan, 78 F.3d at 1154.* "If the answer is yes, then the second step is to determine whether the right is so 'clearly established' that a 'reasonable official' would understand that what he is doing violates that right." *Brennan, 78 F.3d at 1154* (quoting *Anderson v.*

Creighton, 483 U.S. 635, 640, 97 L. Ed. 2d 523, 107 S. Ct. 3034 (1987)).

1. Qualified Immunity for Pierotti

Plaintiffs argue that District Attorney General Pierotti violated their First Amendment and Fourth Amendment rights, as well as their Fourteenth Amendment procedural and substantive due process rights, when he vouched for the truth of the allegations in the civil forfeiture and public nuisance complaints. A civil rights plaintiff, however, cannot simply assert a constitutional violation and rely on broadly stated general rights if that plaintiff hopes to overcome a motion to dismiss on qualified immunity grounds. *Garvie v. Jackson, 845 F.2d 647, 650 (6th Cir. 1988).* Instead, the plaintiff must show some sort of connection between the defendant's conduct and the alleged constitutional violations. See *Anderson v. Creighton, 483 U.S. 635, 639-40, 97 L. Ed. 2d 523, 107 S. Ct. 3034 (1987).* Indeed, we have explained that plaintiffs must allege sufficient facts that demonstrate that their constitutional rights have been violated in those instances where a defendant has asserted a qualified immunity defense. *Cameron v. Seitz, 38 F.3d 264, 273 n. 2 (6th Cir. 1994); Dominque v. Telb, 831 F.2d 673, 676 (6th Cir. 1987).* Although a district court should give plaintiffs an opportunity to amend a complaint once a qualified immunity defense is raised, plaintiffs cannot overcome a

motion to dismiss on qualified immunity grounds unless they allege facts necessary to show that a defendant has violated their constitutional rights. *Cameron, 38 F.3d at 273 n.2.*

In this case, plaintiffs have failed to include factual allegations in their amended complaints that show that Pierotti violated their constitutional rights. Although the district court gave the plaintiffs an opportunity to amend their original complaints after the defendants asserted a qualified immunity defense, the plaintiffs continued simply to describe Pierotti's conduct without explaining how this conduct violated their constitutional rights, alleging that "each of these pleadings was sworn on the oath of the Defendant Pierotti, who vouched for the truth of the averments of the pleadings." J.A. at 496 (Cooper Am. Compl. P 34). The plaintiffs have failed to show how Pierotti's decision to swear to the truth of the allegations in the civil forfeiture and public nuisance complaints deprived them of their First Amendment, Fourth Amendment, or Fourteenth Amendment rights. Thus, the district court should have dismissed the remaining claims against District Attorney General Pierotti on qualified immunity grounds.

2. Qualified Immunity for Parrish

Plaintiffs argue that Larry Parrish cannot successfully assert a qualified immunity defense because he was not

acting as a public official when he allegedly engaged in the unconstitutional conduct at issue in this case. Although we have concluded that Parrish was not acting as a public official when he assisted the prosecutors and therefore is not entitled to absolute immunity, we still must determine whether he can successfully assert a qualified immunity defense. [2]n

Private litigants generally are not eligible to receive qualified immunity from suit under § 1983. *Wyatt v. Cole, 504 U.S. 158, 168-69, 118 L. Ed. 2d 504, 112 S. Ct. 1827 (1992);* see also *Vector Research, 76 F.3d at 698-99; Duncan v. Peck, 844 F.2d 1261, 1264-65 (6th Cir. 1988).* However, we have held on one occasion that private attorneys who work pursuant to a government contract are eligible to receive qualified immunity in certain limited circumstances. *Cullinan v. Abramson, 128 F.3d 301, 310*

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[2]n If a private party has conspired with state officials to violate constitutional rights, then that party qualifies as a state actor and may be held liable pursuant to § 1983 - even though the party would not be eligible to assert a qualified immunity defense. *Wyatt v. Cole, 504 U.S. 158, 168-69, 118 L. Ed. 2d 504, 112 S. Ct. 1827 (1992);* see also *Vector Research, 76 F.3d at 698* ("[A] party who is not a public official may be liable pursuant to *42 U.S.C. § 1983* and yet not be entitled to qualified immunity because, if not a public official, the reason for affording qualified immunity does not exist.").

(6th Cir. 1997), cert. denied, *523 U.S. 1094, 118 S. Ct. 1560, 140 L. Ed. 2d 792 (1998)*. In Cullinan, we held that a law firm that had been hired by the City of Louisville to serve as outside counsel was entitled to qualified immunity against § 1983 claims. *Id.* The court relied exclusively on a statement made by the Supreme Court in *Richardson v. McKnight, 521 U.S. 399, 407, 138 L. Ed. 2d 540, 117 S. Ct. 2100 (1997)*, which noted in dictum that "the common law 'did provide a kind of immunity for certain private defendants, such as doctors or lawyers who performed services at the behest of the sovereign.'" *128 F.3d at 310* (second emphasis added). This statement, along with the fact that the panel saw "no good reason to hold the city's in-house counsel eligible for qualified immunity and not the city's outside counsel," led the panel to conclude that the private attorneys in that case could successfully assert a qualified immunity defense. *Id.*

Even if we assume that the Supreme Court in Richardson intended to extend the qualified immunity doctrine to "doctors or lawyers who performed services at the behest of the sovereign," *Richardson, 521 U.S. at 407*, Parrish still is not entitled to qualified immunity because the circumstances in this case are not analogous to those in Cullinan. For instance, the court in Cullinan pointed out that there was no doubt that the private attorneys in that case were acting at the behest of the city. As the court explained, "the city retained outside legal counsel for the defense of the lawsuit,

entering into a professional service agreement with [the law firm]." *Cullinan, 128 F.3d at 305-06.* In the present case, by contrast, there is little - if any-evidence that shows that Parrish was acting at the behest of the state when he helped the prosecutors pursue legal action against the nightclubs. In fact, Parrish acknowledges in his brief that he was not paid by the district attorney general's office for his legal services. Parrish's Br. at 16.

Furthermore, we believe that extending qualified immunity to a private attorney who works alongside prosecutors in an unofficial capacity would be inconsistent with the goals and objectives that underlie the qualified immunity doctrine. Parrish was not performing any unique government functions when he allegedly engaged in the unconstitutional conduct at issue in this case; thus, no public interest would be unduly impaired if he is forced to resolve the § 1983 claims on the merits. Because Parrish was not acting at the behest of the state when he participated in the investigation and pursued legal action against the nightclubs, and because the circumstances in this case do not implicate the policy concerns that underlie the qualified immunity doctrine, he is not eligible to assert a qualified immunity defense in this case.

C. Immunity for State Claims

The Cooper plaintiffs have also alleged that the defendants engaged in a civil conspiracy under Tennessee common law, conspired to injure Cooper's business under Tennessee common law, and engaged in an abuse of process. The district court dismissed the entire case without ruling explicitly on these state law claims. Although Tennessee courts appear to incorporate the common law immunity doctrine used by federal courts in § 1983 actions, see, e.g., *Shell v. Tennessee, 893 S.W.2d 416, 422 n.6 (Tenn. 1995); Willett v. Ford, 603 S.W.2d 143, 146-48 (Tenn.Ct.App. 1979),* we believe that the exact scope of the Tennessee common law immunity doctrine raises novel and complex issues of state law that Tennessee courts have yet to address fully.

In Shell, the Tennessee Supreme Court relied on federal precedent in § 1983 cases to determine whether the plaintiffs' state law claims against an assistant district attorney should be dismissed on absolute immunity grounds. *Shell, 893 S.W.2d at 422-23.* The court cited *Buckley v. Fitzsimmons, 509 U.S. 259, 125 L. Ed. 2d 209, 113 S. Ct. 2606 (1993),* and *Burns v. Reed, 500 U.S. 478, 114 L. Ed. 2d 547, 111 S. Ct. 1934 (1991),* and explained that these cases "are relevant to [the state law claims] because § 1983 incorporates the common-law immunities historically granted to governmental officers." *Shell, 893 S.W.2d at 422*

n.6. Based on the court's analysis in Shell, we believe that the Tennessee Supreme Court generally would apply federal common law immunity if it had the opportunity to address the state law claims in this case. However, there may be certain nuances in the Tennessee common law immunity doctrine that Tennessee courts have yet to address. Thus, we suggest that on remand the district court consider whether it should decline to exercise its supplemental jurisdiction over the state law claims in this case pursuant to *28 U.S.C. § 1367*(c)(1). If the district court on remand chooses to exercise its supplemental jurisdiction, it will need to determine what immunities (if any) under Tennessee law pertain to the various state law claims.

D. Younger Abstention

The Cooper plaintiffs also sued William Gibbons, the current District Attorney General in Shelby County, in an attempt to obtain a prospective injunction that would prevent Gibbons, or any person acting in concert with him, from ever pursuing an action that has the effect of inhibiting Cooper's businesses without giving him prior notice and an opportunity to be heard. Cooper specifically seeks:

> Preliminary and permanent injunctions prohibiting the Defendants Gibbons, Parrish, Weirich and Nichols, their agents, servants, employees and all

> persons acting in concert with these Defendants, from proceeding in any court to procure any form of process related to the Plaintiffs' businesses which would have the effect of inhibiting the Plaintiffs' exercise of constitutional rights or interfering with operation of the Plaintiffs' business(es) without giving the Plaintiffs and their attorney(s) notice and an opportunity to be heard prior to the issuance of such process.

J.A. at 508 (Cooper Am. Compl. P 85). The district court abstained pursuant to *Younger v. Harris, 401 U.S. 37, 27 L. Ed. 2d 669, 91 S. Ct. 746 (1971),* and dismissed without prejudice Cooper's claim for injunctive relief. *Cooper, 20 F. Supp. 2d at 1211.*

We review a district court's decision to invoke Younger abstention de novo. *Hayse v. Wethington, 110 F.3d 18, 20* h Cir. 1997). The Younger abstention doctrine instructs a federal court to abstain from enjoining a pending state court proceeding "when the state's interest is so important that exercising federal jurisdiction would disrupt the comity between federal and state courts." *Hayse, 110 F.3d at 20.* We have noted that abstention in civil cases requires the satisfaction of three elements. "Federal courts should abstain when (1) state proceedings are pending; (2) the state proceedings involve an important state interest; and (3) the state proceedings will afford the plaintiff an adequate opportunity to raise his constitutional claims." *Id.*

The first element for Younger abstention is satisfied if a state court proceeding was pending when Cooper filed his federal complaint. *Zalman v. Armstrong, 802 F.2d 199, 204 (6th Cir. 1986).* Cooper argues that no state court proceedings were pending in this case when he filed his federal complaint on July 11, 1997, relying on the fact that District Attorney General Gibbons voluntarily nonsuited the nuisance action before Cooper filed his federal complaint. District Attorney General Gibbons responds that the state criminal proceedings involving the obscenity and prostitution charges were still pending against Cooper when he filed his federal complaint. There is insufficient evidence in the record, however, to determine whether the first Younger requirement has been met. [3]n Thus, we remand this aspect of the case to the district court so that it can determine whether criminal proceedings were actually pending against Cooper when he filed his federal complaint.

If there were state criminal proceedings pending when Cooper filed his federal complaint, then we agree with the

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[3]n There is no evidence that we can find in the record - other than the indictments that a grand jury returned against Cooper on December 10, 1996 - that suggests that criminal proceedings were pending against Cooper when he filed his federal complaint on July 11, 1997. Because these indictments could have been dismissed before Cooper filed his federal complaint, we cannot determine whether the first Younger requirement has been met.

district court's conclusion that these proceedings would likely involve important state interests. As the district court in this case pointed out, the state has an important interest in "exposing and prohibiting promotions of prostitution, illegal obscene live performances, acts that contribute to the delinquency of minors, as well as distributions and importations of obscene material." *Cooper, 20 F. Supp. 2d at 1211.* Because Cooper was indicted pursuant to statutes that are meant to protect public health and safety, see, e.g., *DLS, Inc. v. City of Chattanooga, 107 F.3d 403, 410-11 (6th Cir. 1997)* (explaining that city ordinance prohibiting entertainers in adult establishments from coming within six feet of customers did not violate First Amendment because ordinance furthered important state interests in prevention of crime and disease), the second Younger requirement would be satisfied by pending state prosecutions.

The third requirement for Younger abstention is that there be "an adequate opportunity in the state proceedings to raise constitutional challenges." *Fieger v. Thomas, 74 F.3d 740, 745 (6th Cir. 1996)* (quoting *Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432, 73 L. Ed. 2d 116, 102 S. Ct. 2515 (1982)).* In the present case, this requirement would be satisfied only if District Attorney General Gibbons included the nuisance charges against Cooper in the criminal proceedings that were pending in state court, assuming that criminal proceedings were in fact pending when Cooper filed his federal complaint. Indeed,

if state criminal proceedings involving the nuisance charges were pending at the time Cooper filed his federal complaint, then Cooper could have raised his constitutional claims in these proceedings. See *Tennessee v. Draper, 800 S.W.2d 489, 497 (Tenn.Crim.App. 1990)* ("Our courts have held that constitutional issues may be raised and considered at any stage of the proceedings.") (footnote omitted); *Veach v. Tennessee, 491 S.W.2d 81, 83 (Tenn. 1973)* (explaining that a constitutional question may be raised at any time in a criminal proceeding even though appellate courts generally only review questions presented for determination in the trial court). However, if District Attorney General Gibbons did not include the nuisance charges in the state criminal proceedings, then Cooper would not have had an adequate opportunity to raise his constitutional challenges to the nuisance statute. Therefore, we request that the district court on remand determine whether District Attorney General Gibbons included the nuisance charges in the state criminal proceedings, assuming that there were criminal proceedings pending when Cooper filed his federal complaint. If the district court determines on remand that District Attorney General Gibbons did not include the nuisance charges in the state criminal proceedings, then the district court should address the merits of Cooper's request for injunctive relief.

III. CONCLUSION

For the reasons stated above, we AFFIRM the district court's dismissal of the federal claims against the defendants Alissandratos, Pierotti, Weirich, Nichols, Glankler, and Simmons. We REVERSE the district court's dismissal of the claims against Parrish and REMAND the claims against him to the district court for further proceedings consistent with this opinion. We also REVERSE the district court's dismissal of the state law claims against all the defendants and REMAND these claims to the district court for further proceedings consistent with this opinion. Finally, we VACATE the district court's dismissal of the plaintiffs' claims for injunctive relief on Younger abstention grounds and REMAND those claims to the district court for further proceedings consistent with this opinion.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION

STEVEN C. COOPER; et al.,
Plaintiffs,
vs.
LARRY E. PARRISH; et al.,
Defendants.
AMANDA HOLLAND; et al.,
Plaintiffs,
vs.
LARRY PARRISH; et al.,
Defendants.

Western Dist.
of Tenn.
Filed 8/26/98

Case No.:97-2625 Consolidated Case No. 97-2626

20 F. Supp. 2d 1204; 1998 U.S. Dist. LEXIS 14223

August 26, 1998, Filed, Entered on Docket

DISPOSITION: [**1] DEFENDANTS PIEROTTI, PARRISH, WEIRICH, NICHOLS, GLANKLER, SIMMONS, AND GIBBONS'S MOTIONS TO DISMISS ORIGINAL AND AMENDED COMPLAINTS GRANTED.

CORE TERMS: nightclub, abstention, prosecutorial immunity, immunity, prosecutor, temporary restraining order, nuisance, absolute immunity, injunctive relief, immune, club, seized, nude, intimately, motions to dismiss, quasi judicial, judicial process, lawsuit, affirmative defense, judicial officer, criminal process, functional, claimant, abstain, phase, duties, motion to dismiss, special assistant, enforcing, dancing.

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JUDGES: BERNICE BOUIE DONALD, UNITED STATES DISTRICT JUDGE.

OPINION BY: BERNICE BOUIE DONALD

OPINION: [*1206] ORDER GRANTING DEFENDANTS PIEROTTI, PARRISH, WEIRICH, NICHOLS, GLANKLER, SIMMONS, AND GIBBONS'S MOTIONS TO DISMISS ORIGINAL AND AMENDED COMPLAINTS [2]**

Before the Court are the motions of Defendants Larry E. Parrish (Parrish), John W. Pierotti (Pierotti), William B. Gibbons (Gibbons), Jennifer Nichols (Nichols), Amy Weirich (Weirich), Mark Glankler (Glankler), and John Simmons (Simmons) to dismiss the amended complaints of Plaintiffs Steven C. Cooper, et al. (Cooper) and Plaintiffs Amanda Holland, et al. (Holland). Assistant Attorneys General Nichols and Weirich, as well as Simmons, a T.B.I. agent, and Glankler, an investigator for the District Attorney General's office, assisted in enforcing the order of the

Chancery Court to close certain adult entertainment businesses. [1]n

> Plaintiffs have brought suit alleging that Defendants violated their constitutional rights when, acting pursuant to a Temporary Restraining Order signed by Chancellor Alisandratros, they seized eight night clubs. The Plaintiffs, entertainers, managers, servers, [**3] receptionists, doormen and a delivery person, allege that during the raids, they were allegedly detained and searched in violation of their Fourth and Fourteenth Amendment rights. They further allege an infringement of their First Amendment right of "artistic expression."

At the time of the acts complained of by Plaintiffs, Pierotti was the District Attorney General for the Thirteenth Judicial District of Tennessee charged with enforcing the laws of the state of Tennessee. Gibbons succeeded Pierotti as District Attorney General. Nichols and Weirich were assistant attorneys generally working under the umbrella powers of the office and clothed with the powers attendant to that office. Parrish was a special assistant attorney general employed because of his vast expertise in the area of law which is the subject of the restraining order.

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[1]n Gibbons is the current District Attorney General and did not play any role in temporarily shutting down Plaintiffs' businesses.

Jurisdiction is invoked pursuant to *28 U.S.C. §§ 1331*, 1343, and *42 U.S.C. § 1983*.

FACT:

Possibly as early as December of 1995, Defendant Pierotti, with the assistance of Parrish, Weirich, and Nichols prepared legal actions pursuant to Tennessee's nuisance statute, Tenn. Code Ann. 29-3-101, 105, against several Shelby County nightclubs offering [**4] nude or semi nude "dancing." All Plaintiffs either own nightclubs or have worked at nightclubs featuring nude or semi nude "dancing" in Shelby County, Tennessee. On approximately July 7, 1996, in preparation for bringing actions, the defendants met with Chancellor D.J. Alissandratos to discuss filing a nuisance action against Plaintiffs. [2]n Defendants discussed with Chancellor Alissandratos how the pleadings and supporting documentation for the lawsuits should be drafted. On July 11, 1996, Defendants Parrish, Pierotti, Weirich, and Nichols filed, on behalf of the state of Tennessee, a series of pleadings against the Plaintiff club owners. Pierotti, Parrish, Weirich, and Nichols then petitioned Chancellor Alissandratos to issue Temporary Restraining Orders authorizing Defendants Simmons, Glankler, and dozens of

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[2]n Plaintiffs' action against Chancellor Alissandratos was dismissed by this Court in an order entered May 5, 1998.

police officers to enter and forcibly seize eight locations. The eight locations seized all in Memphis, Shelby County, Tennessee were:

The Gold Club	777 North White Station Road;
The MENZ Club	3918 Winchester;
Platinum Plus	2514 Mt. Moriah;
Valentino's	3880 Lamar;
King of Clubs	1741 E. Brooks Road;
Babe's	1575 E. Brooks Road;
Queen of Hearts	2882 Lamb Place; and
Tiffany's Cabaret	3659 South Mendenhall [3]n

[**5]

[*1207] On July 11, 1996, at approximately 6:00 p.m., an officer entered each of the eight nightclubs, announced

[3]n A temporary restraining order was issued authorizing the closure of 3658 South Mendenhall. In fact, no such address exists in Shelby County. Yet the name of the nightclub and description of the property on the order was sufficient to lead officers to the proper location which was to be closed. The mistake concerning the correct address was reasonable and has no bearing on the legality of the order.

that the club was being seized and ordered everyone detained. All persons within the nightclubs were held by law enforcement officers for periods of time between one and five hours and were required to produce identification which was recorded or photocopied. The club occupants were then served subpoenas to appear before Parrish and Pierotti and provide sworn statements. Some employees and [**6] patrons of the nightclubs were required to respond to questioning and submit to a search of their personal property before being allowed to leave. Furthermore, when new customers arrived during the seizures, some were allowed to enter the respective nightclub. Upon entering the nightclub, the new customers were required to produce identification and were then served subpoenas.

The eight seized nightclubs remained closed and in the custody of the state/attorney general for fourteen days until the expiration of the Temporary Restraining Order. The owners then regained possession of their respective nightclubs. In addition to the nightclubs, the business offices of Plaintiff Cooper's Southern Entertainment Management Company, Inc., located at 995 South Yates in Shelby County, was seized on July 11, 1996. [4]n These

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[4]n According to Plaintiff Cooper, Southern Entertainment Management Company, Inc. conducts various business functions related to the operation of the Gold Club, Tiffany's Cabaret, and the Menz Club, but is not a location where "dancing" occurs.

offices also remained closed until the Temporary Restraining Order expired fourteen days later.

[**7]

On March 14, 1997, the public nuisance actions against the instant Plaintiffs were dismissed without prejudice when Defendant Gibbons' office filed a notice of nonsuit.

The Cooper and Holland plaintiffs filed separate complaints on July 11, 1997. The two cases were consolidated on August 27, 1997. Defendants Parrish, Pierotti, Alissandratos, Glankler, and Simmons each filed separate motions to dismiss the complaints. Gibbons, Nichols, and Weirich filed a joint motion to dismiss. Following Defendants' motions to dismiss, Cooper filed an amended complaint on September 19, 1997, and Holland filed an amended complaint on January 20, 1998.

The amended complaints sue all Defendants, except Gibbons, in their individual capacities under the color of law. Only Cooper sues Gibbons, who succeeded Pierotti as District Attorney General on November 1, 1996, in his official capacity. Gibbons is sued exclusively for injunctive relief from future investigations.

Cooper's amended complaint specifically alleges violations of Plaintiffs' rights under the First, Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States. Additionally, Cooper requests compensatory and punitive [**8] damages for the torts of civil conspiracy under Tennessee common law, conspiring to injure another's business under Tennessee common law, abuse of process, and finally a preliminary and permanent injunction upon Defendant Gibbons. Cooper asks that the Court assign all costs of the action, including reasonable attorney's fees pursuant to *42 U.S.C. § 1988,* to Defendants and that the Court grant any further relief that might be appropriate.

Holland's amended complaint also alleges the same four constitutional amendment violations listed in Cooper's amended complaint. Holland also requests that the Court certify this case as a class action under the provisions of Fed. R. Civ. P. 23(a) and 23(b)(1) (3). Finally, the Holland Plaintiffs seek compensatory damages, punitive damages, litigation [*1208] costs and expenses, including reasonable attorney's fees, and any further relief to which they may be entitled.

MOTION TO DISMISS

In a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the movant has the burden of demonstrating that the claimant

can prove no set of facts in support of her claim which would entitle her to relief. Fed. R. Civ. P. 12(b)(6); *Windsor v. The Tennessean, 719 F.2d [**9] 155, at 158 (6th Cir. 1983)*, cert. denied, *469 U.S. 826, 83 L. Ed. 2d 50, 105 S. Ct. 105 (1984)*. The Court must presume all factual allegations of the complaint to be true, and all reasonable inferences are made in favor of the nonmoving party. *Windsor, 719 F.2d 155, at 158.* At issue is not whether the claimant will prevail, but whether, on the strength of the complaint, the claimant is entitled to offer evidence to support her claims. *Scheuer v. Rhodes, 416 U.S. 232, at 236, 40 L. Ed. 2d 90, 94 S. Ct. 1683 (1974).* Dismissal is proper if the complaint lacks an allegation regarding a required element necessary to obtain relief. Id. Dismissal is also proper if an affirmative defense or other bar to relief is apparent from the face of the complaint. 2A J. Moore & J. Lucas, Moore's Federal PracticeP 12.07[2.-5] (2d ed. 1989).

Defendants Pierotti, Parrish, Weirich, and Nichols premise their Motions to Dismiss on several grounds, including absolute prosecutorial immunity. Similarly, Glankler and Simmons use the related affirmative defense of quasi-judicial immunity to block the immediate lawsuit. And finally, defendant Gibbons advances that the doctrine of abstention [**10] should prohibit injunctive relief sought against him. *Younger v. Harris, 401 U.S. 37, at 43-*

44, 91 S. Ct. 746, at 750-55, 27 L. Ed. 2d 669 at 672-74 (1971).

Defendants Pierotti, Parrish, Weirich, and Nichols have all filed motions to dismiss based on absolute immunity. For reasons set forth therein those motions are GRANTED.

ABSOLUTE PROSECUTORIAL IMMUNITY

Absolute prosecutorial immunity is a common law principle used to shield a prosecutor from § 1983 liability. *Imbler v. Pachtman, 424 U.S. 409, at 430-31, 47 L. Ed. 2d 128, 96 S. Ct. 984,* (1976). Prosecutors who initiate a prosecution and advance the state's case in that action can not be sued for money damages associated with that action. *Id. 424 U.S. 409,* (1976). Decisions following Imbler have held that prosecutors are entitled to absolute immunity for their actions in the filing of criminal complaints, the issuance of arrest warrants, and the decisions they make whether or not to pursue charges or to appeal the dismissal of charges. *Buckley v. Fitzsimmons, 509 U.S. 259, at 276, 125 L. Ed. 2d 209, 113 S. Ct. 2606 (1993); Burns v. Reed, 500 U.S. 478, at 492-96, 114 L. Ed. 2d 547, 111 S. Ct. 1934 [**11] (1991); Joseph v. Patterson, 795 F.2d 549, at 555 (6th Cir. 1986).* Yet, the doctrine has parameters. Prosecutors can not successfully use absolute prosecutorial immunity to block lawsuits arising from their investigative

or administrative capacity. *Wayte v. United States, 470 U.S. 598, at 608, 84 L. Ed. 2d 547, 105 S. Ct. 1524 (1985).*

The reasoning behind absolute prosecutorial immunity reflects a concern to protect a prosecutor from harassment by unfounded [retaliatory] litigation that would cause a deflection of the prosecutor's energies from his public duties. *Imbler, 424 U.S. 409, at 430-31, 47 L. Ed. 2d 128, 96 S. Ct. 984 (1976).* Absolute prosecutorial immunity also protects against the possibility that prosecutors would hedge their decisions in the face of foreseeable litigation instead of freely exercising their judgment as required by public trust. Id.

The defendant official who seeks absolute immunity bears the burden of showing that such immunity is justified for the function in question. The presumption is that qualified immunity instead of absolute immunity is sufficient to protect government officials in the exercise of their duties. *Burns, 500 [**12] U.S. 478, 486-87, 114 L. Ed. 2d 547, 111 S. Ct. 1934 (1991).* The Supreme Court has provided absolute immunity to certain government officials and has endorsed a "functional" approach for determining whether an official is entitled to absolute immunity. [*1209] This approach focuses on "the nature of the function performed, not the identity of the actor who performed it." *Ireland v. Tunis, 113 F.3d 1435, 1443 (6th Cir. 1997).* According to the functional approach, "immunity is justified and defined

by the functions it protects and serves, not by the person to whom it attaches. *Forrester v White, 484 U.S. 219, at 227, 98 L. Ed. 2d 555, 108 S. Ct. 538 (1988)* (Emphasis in original).

In the recent case of Ireland v. Tunis, the Sixth Circuit precisely held that a state prosecutor is shielded by absolute prosecutorial immunity when he decides to bring forth criminal charges, seeks an arrest warrant, or presents documents to a judicial officer. *Ireland, 113 F.3d 1435 (1988).* Similarly, in *Imbler v. Pachtman, 424 U.S. 409, 47 L. Ed. 2d 128, 96 S. Ct. 984 (1976),* the Supreme Court held that a state prosecutor is entitled to absolute immunity from a civil suit for damages under [**13] *42 U.S.C. § 1983* for activities that are "intimately associated with the judicial phase of the criminal process." *Imbler, 424 U.S. at 430.* Activities which are considered to be "intimately associated with the judicial phase of a criminal process" are: deciding whether and whom to prosecute; deciding what evidence and witnesses to present; and obtaining, reviewing, and evaluating evidence in connection with all of the above. *Id. at 431.* Unquestionably, absolute prosecutorial immunity enjoys broad application.

It is clear that Pierotti, the District Attorney General for the Thirtieth Judicial District of the State of Tennessee, sought and obtained an ex parte order in Chancery Court of Shelby County to close nude, exotic dance clubs, pursuant

to the Tennessee Nuisance Statute, T.C.A. § 29-3-101, et seq. Fed.R.Civ.P. 65 and Tenn. R. Civ. P. 65 provide for injunctive relief in the form of a temporary restraining order on an ex parte basis. Jurisdiction to enforce the T.C.A. § 29-3-101 is specially granted through T.C.A. § 29-3-102 to the District Attorney General and enforced by the Chancery Court. Moreover, Pierotti, as District Attorney General, had the authority [**14] to immediately abate the alleged nuisance without judicial process, as approved and encouraged in T.C.A. § 29-3-101(c). Therefore, since Defendant Pierotti initiated a criminal prosecution in directing the abatement of a nuisance according to T.C.A § 29-3-101 (c), and filed the nuisance complaint pursuant to T.C.A. § 29-3-103, this Court finds that he was conducting activities "intimately associated with the judicial phase of the criminal process," and as such is entitled to absolute prosecutorial immunity. Id.

This Court also holds that Defendant Parrish as Special Assistant to District Attorney General Pierotti, and Assistant Attorneys General Weirich and Nichols, are protected by absolute prosecutorial immunity. In their capacities as Special Assistants to the District Attorney and Assistant District Attorneys, Defendants Parish, Weirich, and Nichols were clothed with the District Attorney's authority to prosecute the Plaintiffs under the Tennessee Statute. Indeed, Weirich, and Nichols were carrying out the directives of District Attorney General Pierotti. Special Assistant Parrish

was empowered to specially exercise a grant of prosecutorial authority which derived from [**15] his appointment. Therefore their actions deserve absolute prosecutorial immunity because they were integrally related to the judicial process of prosecuting the nightclubs as a nuisance under a presumptively valid ordinance. Consequently, the motions of Parrish, Weirich, and Nichols to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure are GRANTED as a matter of law as to the Cooper and Holland plaintiffs.

MOTIONS OF SIMMONS AND GLANKER TO DISMISS QUASI JUDICIAL IMMUNITY

Similarly, Plaintiffs sue Defendants Simmons and Glankler for violations of their constitutional rights under the color of state law based on the role and participation in the club seizures and detentions. Glankler, an investigator for the District Attorney General's office, and Simmons, a T.B.I. agent, were directed by the Temporary Restraining Order "to enter, by use of reasonable force... [to] evacuate persons from the Place and corporate headquarters, and to take all reasonable steps necessary to maintain custody [*1210] exclusively for the court of the place." The Temporary Restraining Order further provides, "T.C.A. § 29-3-105 authorized this Court to close the Place and any other [**16] places from which the place is operated... this Court restricts all access to the Place and the Personalty

to Special Agent Simmons and Investigator Glankler and their designees, until further order..."

As they were actions pursuant to the Chancery Court's [of Shelby County] Order, both Defendants claim quasi-judicial immunity as an affirmative defense to the Plaintiffs' claims.

Individuals who have performed duties deemed to be essential and integral to the judicial process may qualify for quasi judicial immunity. These individuals, therefore, are extensions of a "judicial officer who is immune." *Bush v. Rauch, 38 F.3d 842, at 847 (6th Cir. 1994).* As a "judicial officer," Alissandratos's actions are immune from the instant lawsuit, Glankler and Simmons's conduct will be scrutinized to determine whether they are similarly immune. Using the "functional" approach, the Court will grant quasi judicial immunity if their actions were intimately connected to the judicial process.

The Sixth Circuit acknowledged the broad range of quasi judicial immunity when it granted the immunity to officials who previously executed a valid court order. *Bush, 38 F.3d 842 (1994); Vicory v. [**17] Walton, 721 F.2d 1062, at 1066 (1983).* The Bush court emphasized, "enforcing or executing a court order is intrinsically associated with a judicial proceeding." *Bush, supra.* Glankler and Simmons were expressly ordered to enforce the Temporary

Restraining Order and take in custodia legis the "Place," located at the street address listed in the nuisance complaint and described in the Restraining Order. First, as the Order was properly issued under a presumptively valid statute, the activity is protected by immunity. [5]n Second, the Order is, without question, an intrinsic part of a judicial proceeding. Officers acting pursuant to a judicial order are immune from liability, supra. Thus, based on the theory of quasi judicial immunity, Glankler and Simmons's execution of the valid Temporary Restraining Order is entitled to absolute immunity. Accordingly, the motions to dismiss of both Glankler and Simmons are GRANTED for failure to state a cause upon which relief can be granted.

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[5]n Persons acting pursuant to a court order or in conjunction with judicial activities are absolutely immune. *Mays v. Sudderth, 97 F.3d 107 (5th Cir. 1996); Valdez v. City and County of Denver, 878 F.2d 1285 (10th Cir. 1989); Scarso v. Cuyahoga County Dept. of Social Services, 747 F. Supp. 381 (N.D. Ohio 1990)* (Social Services employees executing judicial orders are absolutely immune).

THE MOTION TO DISMISS OF WILLIAM GIBBONS YOUNGER ABSTENTION

Cooper sues Gibbons, for preliminary and permanent injunctive relief from prospective prosecution. Cooper seeks injunctive relief assuring that Gibbons, or any person acting in concert with him, will never proceed in any court to procure any form of process related to Cooper's businesses which would have the effect of inhibiting the operation of the businesses without giving Cooper and his attorney(s) notice and an opportunity to be heard prior to the issuance of such process. Gibbons moves for dismissal based on the Younger abstention doctrine asserting that it bars any injunctive request under the circumstances of the present case. *Younger v. Harris, 401 U.S. 37, 27 L. Ed. 2d 669, 91 S. Ct. 746 (1971).*

The Younger abstention doctrine requires that a federal court abstain from enjoining a pending state criminal proceeding when the state's interest is so important that exercising federal jurisdiction would disrupt the comity between federal and state courts. *Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, at 11, 95 L. Ed. 2d 1, 107 S. Ct. 1519 (1987).* The Supreme Court has since applied Younger "to non [**19] criminal judicial proceedings when important state interests are involved." *Kelm v. Hyatt, 44 F.3d 415, at 419 (6th Cir. 1995)* (quoting *Middlesex County Ethics Comm. v. Garden State Bar Ass'n. 457 U.S. 423, at 432, 73*

L. Ed. 2d 116, 102 S. Ct. 2515 (1982). In Pennzoil Co. v. Texaco, Inc., the Supreme Court extended Younger to state [*1211] civil proceedings. *481 U.S. at 17 (1987).* Younger abstention in civil cases requires three elements to be met. Federal courts should abstain when (1) state proceedings are pending; (2) the state proceedings involve an important state interest; and (3) the state proceedings will afford Plaintiffs an adequate opportunity to raise constitutional claims. *Hayse v. Wethington, 110 F.3d 18, at 20 (6th Cir. 1997)* (citing *Mann v. Conlin, 22 F.3d 100 (6th Cir. 1994)).*

If a state proceeding is pending at the time the action is filed in federal court, then the first requirement for Younger abstention is satisfied. *Federal Express Corp. v. Tennessee Pub. Serv. Comm'n, 925 F.2d 962, at 969 (6th Cir. 1991),* cert. denied, *502 U.S. 812, 116 L. Ed. 2d 35, 112 S. Ct. 59 (1991).* The proper time for determining the applicability of [**20] Younger abstention is when the federal complaint is filed. *Zalman v. Armstrong, 802 F.2d 199, at 204 (6th Cir. 1986).* The Sixth Circuit noted in Zalman that application of the Younger abstention doctrine is not merely mechanical in nature, but should emphasize the concerns and priorities that encompass the rule. *802 F.2d at 202 (6th Cir. 1986).* Cooper notes in his Memorandum in Opposition to several Defendants' Motions to Dismiss that no proceedings which he seeks to enjoin were pending when he filed his original complaint in federal court on July 11,

1997. Admittedly, Gibbons voluntarily non-suited the nuisance actions without prejudice on March 14, 1997, but he simultaneously notified the Criminal Court of Shelby County that the nuisance actions would be included in pending criminal cases against Cooper.

If the requested injunctive relief were granted, it would have the effect of collaterally attacking the constitutionality of T.C.A. 29-3-101, et seq. as well as the constitutionality of statutes criminalizing the conduct that precipitated enforcement of the nuisance statutes. Such an injunction would also strip the District Attorney General's office of power to [**21] uncover and stop bona fide nuisance(s) thereby undermining the legitimate authority of the office. In evaluating the abstention doctrine in light of the particular facts and circumstances of this case, the Court finds that the first requirement of Younger abstention has been met.

The Court also finds that the state proceedings at issue involve important state interests. The state has an uncontested interest in exposing and prohibiting promotions of prostitution, illegal obscene live performances, acts that contribute to the delinquency of minors, as well as distributions and importations of obscene material. Cooper is currently under indictment for all the above mentioned crimes which stem from the July 11, 1996 raid that law enforcement officers conducted on his businesses. The state

is not only interested in exposing and prohibiting such conduct on its face, but is also greatly concerned in fighting the health problems and societal ills that often accompany such outlawed conduct. Thus, the second prong of Younger abstention is met.

Finally, the plaintiffs have failed to demonstrate that they lack an opportunity to raise their litany of constitutional claims in state court. [**22] Nothing in the amended complaint nor Cooper's Memorandum in Opposition to the Motions to Dismiss addresses the issue of whether Shelby County Criminal Court is an appropriate setting to hear their constitutional claims. With the realization of all three Younger abstention doctrine requirements, the Court finds that based on the doctrine of abstention, this court should ABSTAIN from adjudicating the remainder of the case on its merits. Accordingly, the Court hereby DISMISSES, without prejudice, Plaintiff's claims for injunctive relief, pursuant to the abstention doctrine set forth in *Younger, 401 U.S. 37, 27 L. Ed. 2d 669, 91 S. Ct. 746.*

CLAIMS AGAINST MEMPHIS POLICE DEPARTMENT

Plaintiffs' complaint alleges claims against the Memphis Police Department. The Memphis Police Department is not a usable entity. *Hafer v. Melo, 502 U.S. 21, 116 L. Ed. 2d 301, 112 S. Ct. 358 (1991).* Accordingly, Plaintiffs' complaint fails to state a cause of action upon which relief

may be granted and the court sua sponte DISMISSES Plaintiffs' claims against the Memphis [*1212] Police Department under Fed.R.Civ.P. 12(b)(6).

CONCLUSION

As no justifiable claims remain against [**23] any Defendant, the Court hereby DISMISSES Plaintiffs' complaint. Accordingly, the Court need not consider Holland's request for class action certification. The Clerk is directed to enter the appropriate order closing this case.

IT IS SO ORDERED this 26th day of August, 1998.

BERNICE BOUIE DONALD

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

STEVEN C. COOPER; et al,
Plaintiff,

JUDGMENT IN A CIVIL CASE

vs.

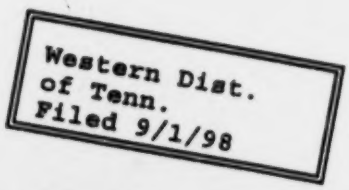
LARRY E. PARRISH; et al,
Defendant.

CASE NO: 97-2625-D

DECISION BY COURT. This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS SO ORDERED AND ADJUDGED that in accordance with the Order Granting Defendant's Motion to Dismiss Original and Amended Complaints entered 08-26-98, this cause is hereby dismissed.

APPROVED:



/s/ BERNICE B. DONALD
BERNICE B. DONALD
UNITED STATES DISTRICT COURT

Sept. 1, 1998
Date

ROBERT R. DI TROLIO
Clerk of Court
/s/ Yolanda Savage
(By) Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

AMANDA HOLLAND, et al,
Plaintiff,

JUDGMENT IN A CIVIL CASE

vs.

Western Dist.
of Tenn.
Filed 9/1/98

LARRY E. PARRISH, et al,
Defendant.

CASE NO: 97-2626-D

DECISION BY COURT. This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS SO ORDERED AND ADJUDGED that in accordance with the Order Granting Defendant's Motion to Dismiss Original and Amended Complaints entered 08-26-98, this cause is hereby dismissed.

APPROVED:
/s/ BERNICE B. DONALD
BERNICE B. DONALD
UNITED STATES DISTRICT COURT

Sept. 1, 1998
Date

ROBERT R. DI TROLIO
Clerk of Court
/s/ Suzie Hoxie
(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN SECTION

STEVEN C. COOPER, et al.,
Plaintiffs,

vs.

LARRY E. PARRISH, et al.,
Defendants.

Western Dist.
of Tenn.
Filed 8/26/98

Case No.: 97-2625

Consolidated

AMANDA HOLLAND, et al.,
Plaintiffs,

vs.

LARRY PARRISH, et al.,
Defendants.

Case No. 97-2626

ORDER GRANTING DEFENDANTS PIEROTTI, PARRISH, WEIRICH, NICHOLS, GLANKLER, SIMMONS, AND GIBBONS'S MOTIONS TO DISMISS ORIGINAL AND AMENDED COMPLAINTS

Before the Court are the motions of Defendants Larry E. Parrish (Parrish), John W. Pierotti (Pierotti), William B. Gibbons (Gibbons), Jennifer Nichols (Nichols),

Amy Weirich (Weirich), Mark Glankler (Glankler), and John Simmons (Simmons) to dismiss the amended complaints of Plaintiffs Steven C. Cooper, et al. (Cooper) and Plaintiffs Amanda Holland, et al. (Holland). Assistant Attorneys General Nichols and Weirich, as well as Simmons, a T.B.I. agent, and Glankler, an investigator for the District Attorney General's office, assisted in enforcing the order of the Chancery Court to close certain adult entertainment businesses.[1]

Plaintiffs have brought suit alleging that Defendants violated their constitutional rights when, acting pursuant to a Temporary Restraining Order signed by Chancellor Alisandratros, they seized eight night clubs. The Plaintiffs, entertainers, managers, servers, receptionists, doormen and a delivery person, allege that during the raids, they were allegedly detained and searched in violation of their Fourth and Fourteenth Amendment rights. They further allege an infringement of their First Amendment right of "artistic expression."

At the time of the acts complained of by Plaintiffs, Pierotti was the District Attorney General for the Thirteenth Judicial District of Tennessee charged with enforcing the

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laws of the state of Tennessee. Gibbons succeeded Pierotti as District Attorney General. Nichols and Weirich were assistant attorneys generally working under the umbrella powers of the office and clothed with the powers attendant to that office. Parrish was a special assistant attorney general employed because of his vast expertise in the area of law which is the subject of the restraining order.

Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331, 1343, and 42 U.S.C. § 1983.

FACTS

Possibly as early as December of 1995, Defendant Pierotti, with the assistance of Parrish, Weirich, and Nichols prepared legal actions pursuant to Tennessee's nuisance statute, Tenn. Code An. 29-3-101, 105, against several Shelby County nightclubs offering nude or semi nude "dancing". All Plaintiffs either own nightclubs or have worked at nightclubs featuring nude or semi nude "dancing" in Shelby County, Tennessee. On approximately July 7, 1996, in preparation for bringing actions, the defendants met with Chancellor D.J. Alissandratos to discuss filing a nuisance action against Plaintiffs.[2] Defendants discussed

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with Chancellor Alissandratos how the pleadings and supporting documentation for the lawsuits should be drafted. On July 11, 1996, Defendants Parrish, Pierotti, Weirich, and Nichols filed, on behalf of the state of Tennessee, a series of pleadings against the Plaintiff club owners. Pierotti, Parrish, Weirich, and Nichols then petitioned Chancellor Alissandratos to issue Temporary Restraining Orders authorizing Defendants Simmons, Glankler, and dozens of police officers to enter and forcibly seize eight locations. The eight locations seized all in Memphis, Shelby County, Tennessee were:

The Gold Club	777 North White Station Road;
The MENZ Club	3918 Winchester;
Platinum Plus	2514 Mt. Moriah;
Valentino's	3880 Lamar;
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Tiffany's Cabaret	3659 South Mendenhall[3]

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[3]A temporary restraining order was issued authorizing the closure of 3658 South Mendenhall. In fact, no such address exists in Shelby County. Yet the name of the nightclub and description of the property on the order was sufficient to lead officers to the proper location which was to be closed. The mistake concerning the correct address was reasonable and has no bearing on the legality of the order.

On July 11, 1996, at approximately 6:00 p.m.. an officer entered each of the eight nightclubs, announced that the club was being seized and ordered everyone detained. All persons within the nightclubs were held by law enforcement officers for periods of time between one and five hours and were required to produce identification which was recorded or photocopied. The club occupants were then served subpoenas to appear before Parrish and Pierotti and provide sworn statements. Some employees and patrons of the nightclubs were required to respond to questioning and submit to a search of their personal property before being allowed to leave. Furthermore, when new customers arrived during the seizures, some were allowed to enter the respective nightclub. Upon entering the nightclub, the new customers were required to produce identification and were then served subpoenas.

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offices also remained closed until the Temporary Restraining Order expired fourteen days later.

On March 14, 1997, the public nuisance actions against the instant Plaintiffs were dismissed without prejudice when Defendant Gibbons' office filed a notice of nonsuit.

The Cooper and Holland plaintiffs filed separate complaints on July 11, 1997. The two cases were consolidated on August 27, 1997. Defendants Parrish, Pierotti, Alissandratos, Glankler, and Simmons each filed separate motions to dismiss the complaints. Gibbons, Nichols, and Weirich filed a joint motion to dismiss. Following Defendants' motions to dismiss, Cooper filed an amended complaint on September 19, 1997, and Holland filed an amended complaint on January 20, 1998.

The amended complaints sue all Defendants, except Gibbons, in their individual capacities under the color of law. Only Cooper sues Gibbons, who succeeded Pierotti as District Attorney General on November 1, 1996, in his official capacity. Gibbons is sued exclusively for injunctive relief from future investigations.

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functions related to the operation of the Gold Club, Tiffany's Cabaret, and the Menz Club, but is not a location where "dancing" occurs.

Cooper's amended complaint specifically alleges violations of Plaintiffs' rights under the First, Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States. Additionally, Cooper requests compensatory and punitive damages for the torts of civil conspiracy under Tennessee common law, conspiring to injure another's business under Tennessee common law, abuse of process, and finally a preliminary and permanent injunction upon Defendant Gibbons. Cooper asks that the Court assign all costs of the action, including reasonable attorney's fees pursuant to 42 U.S.C. § 1988, to Defendants and that the Court grant any further relief that might be appropriate.

Holland's amended complaint also alleges the same four constitutional amendment violations listed in Cooper's amended complaint. Holland also requests that the Court certify this case as a class action under the provisions of Fed. R. Civ. P. 23(a) and 23(b)(1) (3). Finally, the Holland Plaintiffs seek compensatory damages, punitive damages, litigation costs and expenses, including reasonable attorney's fees, and any further relief to which they may be entitled.

MOTION TO DISMISS

In a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the movant has the burden of demonstrating that the claimant can prove no set of facts in support of her claim which would entitle her to relief. Fed. R. Civ. P. 12(b)(6); Windsor v. The Tennessean, 719 F.2d 155, at 158 (6th Cir. 1983), cert. denied, 469 U.S. 826 (1984). The Court must presume all factual allegations of the complaint to be true, and all reasonable inferences are made in favor of the nonmoving party. Windsor, 719 F.2d 155, at 158. At issue is not whether the claimant will prevail, but whether, on the strength of the complaint, the claimant is entitled to offer evidence to support her claims. Scheuer v. Rhodes, 416 U.S. 232, at 236 (1974). Dismissal is proper if the complaint lacks an allegation regarding a required element necessary to obtain relief. Id. Dismissal is also proper if an affirmative defense or other bar to relief is apparent from the face of the complaint. 2A J. Moore & J. Lucas, Moore's Federal Practice¶ 12.07[2.-5] (2d ed. 1989).

Defendants Pierotti, Parrish, Weirich, and Nichols premise their Motions to Dismiss on several grounds, including absolute prosecutorial immunity. Similarly, Glankler and Simmons use the related affirmative defense of quasi-judicial immunity to block the immediate lawsuit. And finally, defendant Gibbons advances that the doctrine of abstention should prohibit injunctive relief sought against

him. Younger v. Harris, 401 U.S. 37, at 43-44, 91 S.Ct. 746, at 750-55, 77 L.Ed.2d 669. at 672-74 (1971).

Defendants Pierotti, Parrish, Weirich, and Nichols have all filed motions to dismiss based on absolute immunity. For reasons set forth therein those motions are **GRANTED.**

ABSOLUTE PROSECUTORIAL IMMUNITY

Absolute prosecutorial immunity is a common law principle used to shield a prosecutor from § 1983 liability. Imbler v. Pachtman, 424 U.S. 409, at 430-31, (1976). Prosecutors who initiate a prosecution and advance the state's case in that action can not be sued for money damages associated with that action. Id. 424 U.S. 409, (1976). Decisions following Imbler have held that prosecutors are entitled to absolute immunity for their actions in the filing of criminal complaints, the issuance of arrest warrants, and the decisions they make whether or not to pursue charges or to appeal the dismissal of charges. Buckley v. Fitzsimmons, 509 U.S. 259, at 276 (1993); Burns v. Reed, 500 U.S. 478, at 492-96 (1991); Joseph v. Patterson, 795 F.2d 549, at 555 (6th Cir. 1986). Yet, the doctrine has parameters. Prosecutors can not successfully use absolute prosecutorial immunity to block lawsuits

arising from their investigative or administrative capacity. Wayte v. United States, 470 U.S. 598, at 608 (1985).

The reasoning behind absolute prosecutorial immunity reflects a concern to protect a prosecutor from harassment by unfounded [retaliatory] litigation that would cause a deflection of the prosecutor's energies from his public duties. Imbler, 424 U.S. 409. at 430-31 (1976). Absolute prosecutorial immunity also protects against the possibility that prosecutors would hedge their decisions in the face of foreseeable litigation instead of freely exercising their judgment as required by public trust. Id.

The defendant official who seeks absolute immunity bears the burden of showing that such immunity is justified for the function in question. The presumption is that qualified immunity instead of absolute immunity is sufficient to protect government officials in the exercise of their duties. Burns, 500 U.S. 478, 486-87 (1991). The Supreme Court has provided absolute immunity to certain government officials and has endorsed a "functional" approach for determining whether an official is entitled to absolute immunity. This approach focuses on "the nature of the function performed, not the identity of the actor who performed it." Ireland v. Tunis, 113 F.3d 1435, 1443 (6th Cir. 1997). According to the functional approach, "immunity is justified and defined by the functions it protects and serves, not by the person to whom it attaches.

Forrester v. White, 484 U.S. 219. at 227 (1988) (Emphasis in original).

In the recent case of Ireland v. Tunis, the Sixth Circuit precisely held that a state prosecutor is shielded by absolute prosecutorial immunity when he decides to bring forth criminal charges, seeks an arrest warrant, or presents documents to a judicial officer. Ireland, 113 F.3d 1435 (1988). Similarly, in Imbler v. Pachtman, 424 U.S. 409 (1976), the Supreme Court held that a state prosecutor is entitled to absolute immunity from a civil suit for damages under 42 U.S.C. § 1983 for activities that are "intimately associated with the judicial phase of the criminal process." Imbler, 424 U.S. at 430. Activities which are considered to be "intimately associated with the judicial phase of a criminal process" are: deciding whether and whom to prosecute; deciding what evidence and witnesses to present; and obtaining, reviewing, and evaluating evidence in connection with all of the above. Id, at 431. Unquestionably, absolute prosecutorial immunity enjoys broad application.

It is clear that Pierotti, the District Attorney General for the Thirtieth Judicial District of the State of Tennessee, sought and obtained an *ex parte* order in Chancery Court of Shelby County to close nude, exotic dance clubs, pursuant to the Tennessee Nuisance Statute, T.C.A. § 29-3-101, et seq. Fed.R.Civ.P. 65 and Tenn. R. Civ. P. 65 provide for

injunctive relief in the form of a temporary restraining order on an *ex parte* basis. Jurisdiction to enforce the T.C.A. § 29-3-101 is specially granted through T.C.A. § 29-3-102 to the District Attorney General and enforced by the Chancery Court. Moreover, Pierotti, as District Attorney General, had the authority to immediately abate the alleged nuisance without judicial process, as approved and encouraged in T.C.A. § 29-3-101(c). Therefore, since Defendant Pierotti initiated a criminal prosecution in directing the abatement of a nuisance according to T.C.A. § 29-3-101 (c), and filed the nuisance complaint pursuant to T.C.A. § 29-3-103, this Court finds that he was conducting activities "intimately associated with the judicial phase of the criminal process," and as such is entitled to absolute prosecutorial immunity. Id.

This Court also holds that Defendant Parrish as Special Assistant to District Attorney General Pierotti, and Assistant Attorneys General Weirich and Nichols, are protected by absolute prosecutorial immunity. In their capacities as Special Assistants to the District Attorney and Assistant District Attorneys, Defendants Parish, Weirich, and Nichols were clothed with the District Attorney's authority to prosecute the Plaintiffs under the Tennessee Statute. Indeed, Weirich, and Nichols were carrying out the directives of District Attorney General Pierotti. Special Assistant Parrish was empowered to specially exercise a grant of prosecutorial authority which derived from his

appointment. Therefore their actions deserve absolute prosecutorial immunity because they were integrally related to the judicial process of prosecuting the nightclubs as a nuisance under a presumptively valid ordinance. Consequently, the motions of Parrish, Weirich, and Nichols to dismiss pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure are **GRANTED** as a matter of law as to the Cooper and Holland plaintiffs.

MOTIONS OF SIMMONS AND GLANKLER TO DISMISS QUASI JUDICIAL IMMUNITY

Similarly, Plaintiffs sue Defendants Simmons and Glankler for violations of their constitutional rights under the color of state law based on the role and participation in the club seizures and detentions. Glankler, an investigator for the District Attorney General's office, and Simmons, a T.B.I. agent, were directed by the Temporary Restraining Order "to enter, by use of reasonable force... [to] evacuate persons from the Place and corporate headquarters, and to take all reasonable steps necessary to maintain custody exclusively for the court of the place." The Temporary Restraining Order further provides, "T.C.A. § 29-3-105 authorized this Court to close the Place and any other places from which the place is operated...this Court restricts all access to the Place and the Personalty to Special Agent

Simmons and Investigator Glankler and their designees, until further order..."

As they were actions pursuant to the Chancery Court's [of Shelby County] Order, both Defendants claim quasi-judicial immunity as an affirmative defense to the Plaintiffs' claims.

Individuals who have performed duties deemed to be essential and integral to the judicial process may qualify for quasi judicial immunity. These individuals, therefore, are extensions of a "judicial officer who is immune." Bush v. Rauch, 38 F.3d 842, at 847 (6th Cir. 1994). As a "judicial officer," Alissandratos's actions are immune from the instant lawsuit, Glankler and Simmons's conduct will be scrutinized to determine whether they are similarly immune. Using the "functional" approach, the Court will grant quasi judicial immunity if their actions were intimately connected to the judicial process.

The Sixth Circuit acknowledged the broad range of quasi judicial immunity when it granted the immunity to officials who previously executed a valid court order. Bush, 38 F.3d 842 (1994); Vicory v. Walton, 721 F.2d 1062, at 1066 (1983). The Bush court emphasized, "enforcing or executing a court order is intrinsically associated with a judicial proceeding." Bush, supra. Glankler and Simmons were expressly ordered to enforce

the Temporary Restraining Order and take *in custodia legis* the "Place," located at the street address listed in the nuisance complaint and described in the Restraining Order. First, as the Order was properly issued under a presumptively valid statute, the activity is protected by immunity.[5] Second, the Order is, without question, an intrinsic part of a judicial proceeding. Officers acting pursuant to a judicial order are immune from liability, supra. Thus, based on the theory of quasi judicial immunity, Glankler and Simmons's execution of the valid Temporary Restraining Order is entitled to absolute immunity. Accordingly, the motions to dismiss of both Glankler and Simmons are **GRANTED** for failure to state a cause upon which relief can be granted.

THE MOTION TO DISMISS OF WILLIAM GIBBONS YOUNGER ABSTENTION

Cooper sues Gibbons, for preliminary and permanent injunctive relief from prospective prosecution. Cooper

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[5]Persons acting pursuant to a court order or in conjunction with judicial activities are absolutely immune. Mays v. Suddenth 97 F.3d 107 (5th Cir. 1996); Valdez v. City and County of Denver 878 F.3d 1285 (10th Cir. 1989); Scarso v. Cuyahoga County Dept. of Social Services 747 F. Supp. 381 (N.D. Ohio 1990) (Social Services employees executing judicial orders are absolutely immune).

seeks injunctive relief assuring that Gibbons, or any person acting in concert with him, will never proceed in any court to procure any form of process related to Cooper's businesses which would have the effect of inhibiting the operation of the businesses without giving Cooper and his attorney(s) notice and an opportunity to be heard prior to the issuance of such process. Gibbons moves for dismissal based on the Younger abstention doctrine asserting that it bars any injunctive request under the circumstances of the present case. Younger v. Harris, 401 U.S. 37 (1971).

The Younger abstention doctrine requires that a federal court abstain from enjoining a pending state criminal proceeding when the state's interest is so important that exercising federal jurisdiction would disrupt the comity between federal and state courts. Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, at 11 (1987). The Supreme Court has since applied Younger "to non criminal judicial proceedings when important state interests are involved." Kelm v. Hyatt, 44 F.3d 415, at 419 (6th Cir. 1995) (quoting Middlesex County Ethics Comm. v. Garden State Bar Ass'n. 457 U.S. 423, at 432 (1982). In Pennzoil Co. v. Texaco, Inc., the Supreme Court extended Younger to state civil proceedings. 481 U.S. at 17 (1987). Younger abstention in civil cases requires three elements to be met. Federal courts should abstain when (1)state proceedings are pending; (2) the state proceedings involve an important state interest; and (3) the state proceedings will afford Plaintiffs

an adequate opportunity to raise constitutional claims. Hayse v. Wethington, 110 F.3d 18, at 20 (6th Cir. 1997) (citing Mann v. Conlin, 22 F.3d 100 (6th Cir. 1994)).

If a state proceeding is pending at the time the action is filed in federal court, then the first requirement for Younger abstention is satisfied. Federal Express Corp. v. Tennessee Pub. Serv. Comm'n, 925 F.2d 962, at 969 (6th Cir. 1991), cert. denied, 502 U.S. 812 (1991). The proper time for determining the applicability of Younger abstention is when the federal complaint is filed. Zalman v. Armstrong, 809 F.2d 199, at 204 (6th Cir. 1986). The Sixth Circuit noted in Zalman that application of the Younger abstention doctrine is not merely mechanical in nature, but should emphasize the concerns and priorities that encompass the rule. 809 F.2d at 202 (6th Cir. 1986). Cooper notes in his Memorandum in Opposition to several Defendants' Motions to Dismiss that no proceedings which he seeks to enjoin were pending when he filed his original complaint in federal court on July 11, 1997. Admittedly, Gibbons voluntarily non-suited the nuisance actions without prejudice on March 14, 1997, but he simultaneously notified the Criminal Court of Shelby County that the nuisance actions would be included in pending criminal cases against Cooper.

If the requested injunctive relief were granted, it would have the effect of collaterally attacking the

constitutionality of T.C.A. 29-3-101, et seq. as well as the constitutionality of statutes criminalizing the conduct that precipitated enforcement of the nuisance statutes. Such an injunction would also strip the District Attorney General's office of power to uncover and stop bona fide nuisance(s) thereby undermining the legitimate authority of the office. In evaluating the abstention doctrine in light of the particular facts and circumstances of this case, the Court finds that the first requirement of Younger abstention has been met.

The Court also finds that the state proceedings at issue involve important state interests. The state has an uncontested interest in exposing and prohibiting promotions of prostitution, illegal obscene live performances, acts that contribute to the delinquency of minors, as well as distributions and importations of obscene material. Cooper is currently under indictment for all the above mentioned crimes which stem from the July 11, 1996 raid that law enforcement officers conducted on his businesses. The state is not only interested in exposing and prohibiting such conduct on its face, but is also greatly concerned in fighting the health problems and societal ills that often accompany such outlawed conduct. Thus, the second prong of Younger abstention is met.

Finally, the plaintiffs have failed to demonstrate that they lack an opportunity to raise their litany of

constitutional claims in state court. Nothing in the amended complaint nor Cooper's Memorandum in Opposition to the Motions to Dismiss addresses the issue of whether Shelby County Criminal Court is an appropriate setting to hear their constitutional claims. With the realization of all three Younger abstention doctrine requirements, the Court finds that based on the doctrine of abstention, this court should **ABSTAIN** from adjudicating the remainder of the case on its merits. Accordingly, the Court hereby **DISMISSES,** without prejudice, Plaintiffs claims for injunctive relief, pursuant to the abstention doctrine set forth in Younger, 401 U.S. 37.

CLAIMS AGAINST MEMPHIS POLICE DEPARTMENT

Plaintiffs' complaint alleges claims against the Memphis Police Department. The Memphis Police Department is not a suable entity. Hafer v. Melo, 502 U.S. 21 (1991). Accordingly, Plaintiffs' complaint fails to state a cause of action upon which relief may be granted and the court sua sponte **DISMISSES** Plaintiffs' claims against the Memphis Police Department under Fed.R.Civ.P. 12(b)(6).

CONCLUSION

As no justiciable claims remain against any Defendant, the Court hereby **DISMISSES** Plaintiffs' complaint. Accordingly, the Court need not consider Holland's request for class action certification. The Clerk is directed to enter the appropriate order closing this case.

IT IS SO ORDERED this 26th day of August, 1998.

/s/ Bernice Bouie Donald
BERNICE BOUIE DONALD
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

STEVEN CRAIG COOPER; et al.,
Plaintiffs,

CASE NO. 97-2625-D/A

vs.

LARRY E. PARRISH; et al.,
Defendants.

Western Dist.
of Tenn.
Filed 5/5/98

ORDER GRANTING DEFENDANT D. J. ALISSANDRATOS' MOTION TO DISMISS

This matter is before the court on D. J. Alissandratos' Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6). This court has jurisdiction pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 1331, 1343 (3) and (4) and § 1367.

The plaintiff, certain nightclub owners, are or have been regularly engaged in the presentation of nude and semi-nude dancing through the operation of nightclubs in the Memphis, Shelby County, Tennessee area. Compl. ¶ 19. The plaintiffs allege that the defendants conspired to prevent the plaintiffs from conducting their business, to

deprive the plaintiffs of their real and personal property without due process of law and to make it economically unfeasible for the plaintiffs to conduct their business. Compl ¶¶ 21, 22, 23. Defendant Alissandratos, a judicial officer, is alleged to have engaged in *ex parte* communications between July 3, 1996 and July 11, 1996 with his co-defendants prosecutors regarding the tactics and planning related to the filing of 1996 with his co-defendants prosecutors regarding the tactics and planning related to the filing of the lawsuits against the plaintiffs which resulted in temporary seizure of the plaintiffs' property. Compl. ¶¶ 29, 30, 52.

The plaintiffs filed their complaint for damages and injunctive relief on July 11, 1997. Compensatory and punitive damages only are sought against Alissandratos. Compl. ¶¶ 66, 67, 70, 71, 74, 75, 76, 77, 80, 81. Alissandratos filed his motion to dismiss on August 5, 1997. Plaintiffs' amended complaint was filed on September 19, 1997 and Alissandratos filed his motion to dismiss the amended complaint on October 7, 1997. Plaintiffs' filed their response in opposition to the motions to dismiss filed on behalf of Alissandratos and several other defendants.

In a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the movant has the burden of demonstrating that the non-movant can prove no set of facts in support of a

claim which would entitle him to relief. Fed.R.Civ.P. 12(b)(6); *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-02, 2 L.Ed.2d 80 (1957); *Windsor v. The Tennessean*, 719 F.2d 155, 158 (6th Cir. 1983), cert. denied, 469 U.S. 826, 105 S.Ct. 105, 83 L.Ed.2d 50 (1984). The Court must presume all factual allegations of the Complaint to be true, and all reasonable inferences are made in favor of the nonmoving party. *Windsor*, 719 F.2d at 158. However, neither legal conclusions nor unwarranted factual inferences constitute material allegations, and the Court is not obliged to accept such statements as true. *McBride v. Village of Michiana*, No. 93-1641, 1994 WL 396143, 1994 U.S.App. LEXIS 19679, *7 (6th Cir. July 28, 1994) (per curiam) (citing *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987)). At issue is not whether Plaintiff will prevail, but whether, on the strength of the Complaint, the claimant is entitled to offer evidence to support his claims. *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 1686, 40 L.Ed.2d 90 (1974). A motion to dismiss a Complaint alleging the violation of a civil rights statute (e.g., 42 U.S.C. § 1983) should be "scrutinized with special care." *Brooks v. Seiter*, 779 F.2d 1177, 1180 (6th Cir. 1985). Dismissal is proper if the Complaint lacks an allegation regarding a required element necessary to obtain relief. *Scheuer*, 416 U.S. at 236, 94 S.Ct. at 1686. Dismissal is also proper if "an affirmative defense or other bar to relief is apparent from the face of the complaint." 2A J. Moore & J. Lucas, Moore's Federal Practice P

12.07[2.-5] (2d ed. 1989) In sum, dismissal is proper "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232, 81 L.Ed.2d 59 (1984); *Conley*, 355 U.S. at 46, 78 S.Ct. at 102; *Cameron v. Seitz* 38 F.3d 264, 270 (6th Cir. 1994).

At issue here is Alissandratos' invocation of absolute judicial immunity. "Judicial immunity originated in the Tenth Century, 'as a device for discouraging collateral attacks and thereby helping to establish appellate procedures as the standard system for correcting judicial error'". *Barrett v. Harrington*, 130 F.3d 246, 254 (6th Cir. 1997). (citations omitted). "Immunity serves the public interest in enabling such officials to perform their designated functions effectively without fear that a particular decision may give rise to personal liability." *Clinton v. Jones* - U.S.-, -, 117 S.Ct. 1636, 1643, 137 L.Ed.2d 945 (1997). "Although unfairness and injustice to a litigant may result on occasion, 'it is a general principal of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself."' *Mireles v. Waco*, 502 U.S. 9, 112 S.Ct. 286, 287, 116 L.Ed.2d 9 (1991).

The official seeking the immunity bears the burden of showing that such immunity is justified for the function in question. *Barrett* at 254. Immunity is only overcome in two circumstances:

1. A judge is not immune from liability for nonjudicial acts, that is acts taken outside the judge's judicial capacity.

2. A judge is not immune for actions which, though completely judicial in nature, are taken in complete absence of all jurisdiction.

Barrett at 255. Once immunity is established, however, it cannot be overcome by allegations of bad faith or malice. *Mireles* at 11.

To determine whether Alissandratos' acts were judicial, the court must consider whether the questioned function is one normally performed by a judge[1]. *Barrett* at

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[1]Plaintiffs direct the court to Rule 10 of the Supreme Court of Tennessee for the proposition that Alissandratos was not permitted by Canon 3.A.(4) to maintain *ex parte* communication. The Preamble to the Model Code of Judicial Conduct states that the Code "is designed to provide guidance to judges ... and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability ....

255, citing *Stump v. Sparkman*, 435 U.S. 349, 362, 98 S.Ct. 1099, 1107, 55 L.Ed.2d 331 (1978). The plaintiffs object to Alissandratos' consultations with the prosecutors and Parrish regarding the impending lawsuit and restraining order that were ultimately filed against the plaintiffs as improper *ex parte* communications and that the Chancellor acted as a *de facto* legal advisor. As Alissandratos points out, Tenn. R. Civ. P. 65.03(1) anticipates *ex parte* communication by authorizing the issuance of a restraining order at the commencement of an action without notice to the adverse party. The fact that the required hearing to show that the applicant's rights are being or will be violated by the adverse party absent relief by the court may have developed into the alleged coaching session does not in and of itself make Alissandratos' actions non-judicial. In assessing the totality of the record, the court does find that Alissandratos' actions transcended the bounds of judicial functions. In *Barnes v. Winchell*, 105 F.3d 1111 (6th Cir. 1997), judicial immunity was held to be properly invoked where a judge was accused of directing that charges against the plaintiff be changed from menacing to stalking, notarizing the complaint, preparing or assisting in the preparation of the complaint and maliciously refusing to dismiss the complaints after the prosecutor determined that

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Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

they were frivolous. *Barnes* at 1119. Barnes argued that the acts taken by Winchell were prosecutorial in nature and therefore, non judicial. The Sixth Circuit found that these acts fell within the contours of judicial acts for the purposes of immunity. *Barnes* at 1120. Similarly, Alissandratos' acts were judicial in nature and thus he cannot be shipped of immunity on the grounds that the acts were non-judicial.

Next, the court must consider whether Alissandratos' acts were taken completely without jurisdiction. Generally, where a court has some subject matter jurisdiction, there is sufficient jurisdiction for immunity purposes. *Barnes* at 1122. "'The chancery court has all the powers, privileges and jurisdiction properly and rightfully incident to a court of equity." Tenn. Code Ann. § 16-11-101 (1996). Chancery courts have jurisdiction to abate the public nuisances. Tenn. Code Ann. § 29-3-102 (1996). The issuance of a restraining order at the commencement of an action to abate a public nuisance falls well within the jurisdiction of the Chancery Court. Tenn. Code Ann. § 39-17-905 ("The circuit, chancery, or criminal courts of this state and the chancellors and judges thereof shall have full power, authority, and jurisdiction, upon application by sworn detailed petition filed by the district attorney general within their respective jurisdictions, to issue any and all proper temporary restraining orders..."). Therefore, Alissandratos' acts were not taken completely without jurisdiction.

Judicial immunity is an immunity from suit, not just from ultimate assessment of damages. *Mitchell v. Forsythe*, 472 U.S. 511, 526, 105 S.Ct. 2806, 2815, 86 L.Ed.2d 411 (1985). The Supreme Court has specifically held that judges are absolutely immune from liability under 42 U.S.C. § 1983. *See Brisco v. LaHue*, 460 U.S. 325, 103 S.Ct. 1108, 750 L.Ed.2d 96 (1983); *Pierson v. Ray*, 386 U.S.547, 554, 87 S.Ct. 1213, 1217-18, 18 L.Ed.2d 288 (1967). As to their remaining claims, the plaintiffs' cannot overcome Alissandratos' assertion of absolute judicial immunity. Because there are no set of facts that would support a claim which would entitle the plaintiffs to relief against Alissandratos, their claims against him are dismissed.

Based on the foregoing, the court **GRANTS** Chancellor D. J. Alissandratos' motion to dismiss.

IT IS SO ORDERED this 5th day of May 1998.

/s/ Bernice Bouie Donald
BERNICE BOUIE DONALD
UNITED STATES DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

STEVEN CRAIG COOPER; et al., *Plaintiffs,*	)	
v.	)	**NO. 97-2625-TUA**
LARRY E. PARRISH; et al., *Defendants.*	)	

Western Dist.
of Tenn.
Filed 8/27/97

AMANDA HOLLAND; et al., *Plaintiffs,*	)	
v.	)	**NO. 97-2626-TUBRE**
LARRY E. PARRISH; et al., *Defendants.*	)	

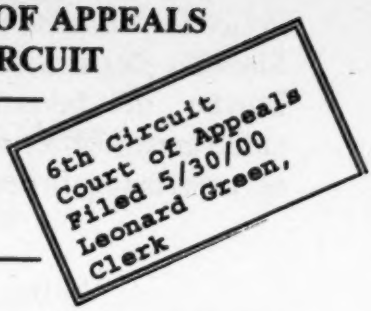
ORDER OF CONSOLIDATION

Upon motion, these cases are consolidated for all purposes, including trial.

IT IS SO ORDERED this 27th day of August, 1997.

/s/ Jerome Turner
JEROME TURNER
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT



ORDER

STEVEN CRAIG COOPER; SOUTHERN ENTERTAINMENT MANAGEMENT CO., INC.; NIGHT MOVES OF MEMPHIS, INC.; 777 MEMPHIS INC; CLUB TIFFANY INC; AMANDA HOLLAND; DAVID S. TUBBS; ASHLEY BURNETTE; JEFFERY H. TONEY; TAMMIE WILSON; ALLISON RODGERS; RONNIE BROTHERS; ROSALIND DEARING; CYNTHIA COOPER; ROYDON STONE; JENNIFER ANN CLEVELAND; FRED DAY; ROBERT HOLLAND; BEVERLY MCFARLAND; TAMMY ZANETTI; GEANNA SMITH; DENEEN TONG, Individually and on behalf of all other persons similarly situated,

Plaintiffs - Appellants,

vs.

LARRY E. PARRISH; AMY P. WEIRICH; JENNIFER S. NICHOLS; MARK GLANKER; JOHN SIMMONS; WILLIAM B. GIBBONS, in his official capacity as District Attorney General for the Thirtieth Judicial District of the State of Tennessee; JOHN W. PIEROTTI; DAVID MARTELLO; D. J. ALISSANDRATOS,

Defendants - Appellees,

JOHN DOES 1-300, unknown officials and officers of The Office of the Attorney General for the Thirtieth Judicial District of Tennessee, unknown officers of The Memphis

Police Department, unknown officers of the Shelby County Sheriff's Department, unknown officers of the Tennessee Bureau of Investigation, and other unknown law enforcement officers and agents of other law enforcement agencies acting in concert with the above named defendants,

Defendants.

BEFORE: RYAN, MOORE AND GIBSON[1], Circuit Judges

Upon consideration of the motion filed by appellee, Larry Parrish to stay the mandate for a period not to exceed ninety days pending the filing of a Petition for Writ of Certiorari,

It is **ORDERED** that the motion be, and it hereby is, GRANTED. The mandate is stayed for ninety days from May 12, 2000.

ENTERED BY ORDER OF THE COURT
/s/ Leonard Green
Leonard Green, Clerk

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[1]The Honorable John R. Gibson, Senior United States Circuit Judge for the Eighth Circuit Court of Appeals, sitting by designation.

Western Dist.
of Tenn.
Filed 3/9/99

STATE OF TENNESSEE,
Appellant,
vs.
DONALD L. CULBREATH and GENNA MCCALLIE,
Appellees.

NO. 02C01-9805-CR-00145

COURT OF CRIMINAL APPEALS OF TENNESSEE, WESTERN SECTION, AT JACKSON

1999 Tenn. Crim. App. LEXIS 191

March 9, 1999, Opinion Filed

SUBSEQUENT HISTORY: Permission to Appeal Granted, both applications September 13, 1999.

PRIOR HISTORY: [*1] SHELBY COUNTY. HON. L. T. LAFFERTY, JUDGE. (Prostitution and Obscenity-Related Offenses).

DISPOSITION: AFFIRMED IN PART; REVERSED IN PART; REMANDED.

COUNSEL: FOR THE APPELLEES: THOMAS E. HANSOM, Memphis, TN. FRIERSON M. GRAVES, JR., Memphis, TN.

FOR THE APPELLANT: JOHN KNOX WALKUP, Attorney General and Reporter. ELIZABETH T. RYAN, Assistant Attorney General, Nashville, TN. WILLIAM L. GIBBONS, District Attorney General. AMY P. WEIRICH, JENNIFER S. NICHOLS, Asst. District Attorneys General, Criminal Justice Complex, Memphis, TN.

JUDGES: JOE G. RILEY, JUDGE. CONCUR: JOHN H. PEAY, JUDGE, JAMES C. BEASLEY, SR., SPECIAL JUDGE, Not participating.

OPINION BY: JOE G. RILEY

OPINION: OPINION

The state appeals as of right an order of the Criminal Court of Shelby County disqualifying the District Attorney General and his staff and dismissing the prostitution and obscenity-related indictments against the defendants. [1]n The issues presented for our review are:

(1) whether the trial court erred in disqualifying the entire Shelby County District Attorney General's Office, as well

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[1]n Oral arguments in this case were heard in Dyersburg, Tennessee. Students of the Lake County, Dyer County and Dyersburg school systems attended at the invitation of this Court in an effort to educate them about our judicial system.

as a special assistant appointed to aid in the prosecution of sexually oriented businesses; and

(2) whether the trial court [*2] erred in dismissing the indictments.

This appeal presents an issue of first impression in Tennessee; namely, whether a private attorney, specially appointed to assist the District Attorney General in the prosecution of sexually oriented businesses, should be disqualified from prosecutorial participation if the attorney receives substantial compensation from a private, special interest group. We conclude that the facts and circumstances of this case require disqualification. Therefore, we AFFIRM the trial court's disqualification of the Shelby County District Attorney General and his staff, including the specially appointed prosecutor; however, we REVERSE the order dismissing the indictments.

FACTS

The material facts of this case do not appear to be [*3] in dispute. Prior to December 1995, the Shelby County District Attorney General's Office had been investigating alleged criminal activity in various sexually oriented businesses. In December 1995, attorney Larry Parrish (hereinafter "Parrish"), a former Assistant United States Attorney who specialized in the prosecution of obscenity

cases, was approached by the executive director of Citizens for Community Values, Inc. (hereinafter "CCV"). CCV is a non-profit organization that supports law enforcement efforts in opposition to obscenity. At the executive director's request, Parrish met with two assistant district attorneys to discuss Tennessee's obscenity laws.

Immediately thereafter, Parrish was contacted by District Attorney General John W. Pierotti (hereinafter "DA Pierotti"). Although DA Pierotti requested Parrish's assistance, he advised Parrish that his office had no money to pay for services rendered by Parrish other than investigatory expenses. Parrish inquired whether DA Pierotti would accept his services if Parrish were paid by outside sources. DA Pierotti agreed.

Two assistant district attorneys, the DA office's investigator, and investigators from the Tennessee Bureau of [*4] Investigation and Department of Revenue were assigned to work with Parrish. It was understood that DA Pierotti was the ultimate decision-making authority, not Parrish.

Parrish immediately launched and spearheaded an extensive, and expensive, investigation of sexually oriented businesses. The investigation's headquarters was Parrish's law office. Parrish met with the two assistant district attorneys and investigators on a daily basis for months. He

rendered monthly statements to CCV who paid him from contributions received. According to Parrish's testimony, he considered CCV "the client and CCV gets a statement just like my client XYZ Corporation. And on that statement there is the itemization . . . for time and expenses just like with every other client."

Although the District Attorney General agreed to pay investigatory expenses, Parrish began paying many of the expenses himself and received reimbursement from CCV. For example, in the course of his investigation, Parrish preferred to utilize court reporters and take sworn statements. These expenses were not borne by the District Attorney General's Office, but instead were reimbursed by CCV. Parrish paid numerous other expenses including, [*5] but not limited to, a TV/VCR, copy costs, courier costs, postage, phone expenses, video monitors, extraordinary quantities of paper, installation of special telephone lines and associated equipment. These expenses were also reimbursed by CCV. Surveillance equipment utilized by investigators and a computer were furnished by the District Attorney General's Office.

From December 20, 1995, through July 28, 1996, Parrish accumulated 2,426 hours on this investigation. His fee was approximately $212,000 plus additional expenses of approximately $34,000. He was paid approximately $56,000

by CCV, thereby leaving a balance due of approximately $190,000.

Parrish had not operated under any type of official appointment as an Assistant District Attorney General until July 11, 1996. On this date, Parrish was formally "appointed Special Assistant District Attorney" by DA Pierotti and administered an oath of office. This same day, a civil action was filed in the Chancery Court of Shelby County by the "State of Tennessee ex rel. John W. Pierotti" against various sexually oriented businesses. [2]n Parrish signed the pleading as "Special Assistant District Attorney General" along with DA Pierotti [*6] and two assistant district attorneys.

On August 30, 1996, at DA Pierotti's request, the Governor of Tennessee, pursuant to Tenn. Code Ann. § 8-6-106, appointed Parrish as "additional counsel to the Attorney General in matters relating to . . . cases currently pending in the Chancery Court of Shelby County, Tennessee . . . under the direction of District Attorney General John W. Pierotti." The letter of appointment noted that Parrish agreed to serve as counsel without

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[2]n The matter was subsequently removed to federal court but ultimately remanded back to the Chancery Court of Shelby County. The state took a voluntary nonsuit in the Chancery Court on December 12, 1996.

compensation from the state. However, the letter further provided: (1) Parrish would disclose to the State Attorney General the amount and source of any compensation received; (2) such information would be a public record; and (3) all services would be performed at the direction of the District Attorney General. Another special appointment with [*7] similar conditions was made by the Governor relating to this litigation when it was removed to federal court. Finally, by letter of July 31, 1997, the Governor appointed Parrish as additional counsel "to assist in handling criminal indictments and petitions to abate nuisances in the Criminal Court of Shelby County." [3]n Again, the same conditions were set forth in the letter of appointment.

In the latter part of October 1996, a rally organized by CCV was held at the Jewish Community Center. The purpose of the event, according to Parrish, was to help defray the expenses incurred by CCV, including Parrish's legal fees and expenses incurred in the investigation. Parrish spoke at the fund raiser. DA Pierotti, who was resigning his office effective November 1, 1996, also spoke at the rally; as did incoming District Attorney [*8] General William L. Gibbons (hereinafter "DA Gibbons"). While speaking

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[3]n A petition to abate nuisances was eventually filed by District Attorney General William L. Gibbons on December 15, 1997. Parrish and three assistant district attorneys also signed this pleading.

against the sexually oriented businesses, neither DA Pierotti nor DA Gibbons solicited contributions.

Upon taking office November 1, 1996, DA Gibbons determined to seek criminal indictments in order to strengthen the civil action for abatement of nuisances. The Tennessee Bureau of Investigation presented the cases to the grand jury. The indictments against these defendants were returned in December 1996 and January 1997. Numerous other indictments relating to sexually oriented businesses were returned as well.

DA Gibbons continued to work closely with Parrish and reiterated that the state would pay all litigation expenses but not compensation for Parrish. DA Gibbons and various members of his staff continued to meet regularly with Parrish.

From December 20, 1995, through November 17, 1997, Parrish received from CCV, or its contributors, the sum of $410,931.87. Of this amount, Parrish's expenses totalled in excess of $104,000.00.

TRIAL COURT'S FINDINGS

The trial court found that Parrish had a "significant interest in the pecuniary rewards" that would result from his prosecutorial activities, had a [*9] conflict of interest, and

should be disqualified from further prosecutorial participation. The trial court further determined the entire District Attorney General's staff should be disqualified due to its close working relationship with Parrish. Finally, the trial court determined that the indictments should be dismissed since the actions of Parrish and the District Attorney General's Office violated the defendants' due process rights. The state appeals from these rulings.

DISQUALIFICATION - STANDARD OF REVIEW

In determining whether a prosecutor should be disqualified, this Court must consider whether the circumstances establish an actual conflict of interest or the appearance of impropriety. *State v. Tate, 925 S.W.2d 548, 550 (Tenn. Crim. App. 1995).* Either results in disqualification. Id. In addition, improper prosecutorial participation can give rise to a due process violation under certain circumstances. See *State v. Eldridge, 951 S.W.2d 775, 782 (Tenn. Crim. App. 1997)*(finding a due process violation by special prosecutors who also represented the victim in a pending civil matter arising from the same incident leading to the criminal prosecution). However, [*10] disqualification of a prosecutor does not necessarily give rise to the disqualification of the entire staff of the District Attorney General. See *Mattress v. State, 564 S.W.2d 678, 680 (Tenn. Crim. App. 1977).* The facts of each case

should be carefully examined in order to determine whether disqualification of the entire staff is appropriate.

The decision to disqualify a prosecutor and/or the entire prosecutorial staff rests in the sound discretion of the trial judge. *State v. Tate, 925 S.W.2d at 549.* This Court's review is limited to whether there has been an abuse of discretion by the trial judge. *Id. at 550.*

DISQUALIFICATION OF PARRISH

The state contends that Parrish was duly appointed, and the trial court erred in disqualifying him. Defendants, on the other hand, contend Parrish had a blatant conflict of interest requiring his disqualification.

A. The Appointment

The duties, responsibilities and authority of the District Attorney General are circumscribed by statute. See Tenn. Code Ann. § 8-7-101 et seq. Also, the number and compensation of assistant district attorneys general are circumscribed by statute. See Tenn. Code Ann. § [*11] 16-2-506. Under certain circumstances, crime victims may employ private counsel to act as co-counsel with the District Attorney General "in trying cases." Tenn. Code Ann. § 8-7-401. The state concedes Parrish was not appointed under this statute.

We find no statutory authority which would allow the District Attorney General to informally appoint Parrish to act on behalf of the state from December 1995 until he took an oath of office in July 1996. Nor do we find any statutory authority authorizing the District Attorney General to formally appoint Parrish in July 1996 as a "Special Assistant District Attorney" with the understanding that Parrish would seek compensation from private sources.

The state contends Parrish was properly appointed by the Governor on three separate occasions beginning in August 1996. Tenn. Code Ann. § 8-6-106 provides:

> In all cases where the interest of the state requires, in the judgment of the governor and attorney general and reporter, additional counsel to the attorney general and reporter or district attorney general, the governor shall employ such counsel, who shall be paid such compensation for services as the governor, secretary of state, [*12] and attorney general and reporter may deem just, the same to be paid out of any money in the treasury not otherwise appropriated, upon the certificate of such officers certifying the amount to the commissioner of finance and administration.

We note that this statute requires such counsel to be compensated by the state treasury. The letter of

appointment, however, specifically provided that Parrish would not be compensated by the state. Although the lack of compensation from the state treasury might not nullify the appointment, the method of compensation utilized by Parrish, as will be discussed more fully hereinafter, clearly justifies his disqualification in the criminal prosecution.

B. Ethical Constraints

The state contends Parrish had no conflict of interest since the interests of CCV and the state were the same; namely, the prosecution of criminal activity and abatement of nuisances relating to sexually oriented businesses. Defendants contend that Parrish clearly had a conflict of interest by virtue of being enormously compensated by a special interest group.

This Court stated in State v. Eldridge, the responsibility of a public prosecutor differs from [*13] that of the usual advocate in that it is the public prosecutor's duty to seek justice, not merely to convict. Code of Professional Responsibility, Tenn. S. Ct. Rule 8, EC 7-13. Unlike a private prosecutor, the public prosecutor is not only an advocate but also must make decisions normally made by an individual client, and those affecting the public interest should be fair to all. Id. A public prosecutor represents the government. A public prosecutor is required to make timely disclosure of exculpatory materials. DR 7-103(B).

On the other hand, private counsel has an obligation to zealously represent the client so as not to prejudice or damage the client during the course of the professional relationship. DR 7-101. Counsel has a duty of fidelity, unquestioned, continuing fidelity to the client. *Brotherhood of Locomotive Firemen & Enginemen v. United States, 411 F.2d 312, 319 (5th Cir. 1969).*

951 S.W.2d at 781; see also *Young v. United States ex rel. Vuitton, 481 U.S. 787, 803-04, 107 S. Ct. 2124, 95 L. Ed. 2d 740 (1987); Berger v. United States, 295 U.S. 78, 88, 55 S. Ct. 629, 633, 79 L. Ed. 1314 (1935).*

A prosecutor appointed by the District Attorney [*14] General or the Governor must abide by the ethical requirements for prosecutors. If that prosecutor is compensated by a special interest group, his or her ethical dilemma is obvious. The attorney owes absolute loyalty to his client, the special interest group. However, as a prosecutor he or she represents the government, not a special interest group. Accordingly, such a prosecutor is not free from compromising influences and loyalties.

C. Due Process

In *Wilson v. Wilson, 984 S.W.2d 898 (Tenn. 1998),* our Supreme Court found no due process violation when a private attorney, representing the beneficiary of a court

order in a civil case, prosecuted a criminal contempt action alleging a violation of that order. The Court examined three factors in analyzing the due process issue: (1) the private interest at stake; (2) the risk of enormous deprivation of the interest through the procedures used and the probative value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *984 S.W.2d 898, 902;* [*15] *Mathews v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18 (1976).* Weighing those factors relative to a private attorney prosecuting a contempt charge, the court concluded there was no due process violation.

Applying those factors to the case at bar, they dictate a different conclusion. Firstly, a significant liberty interest is at stake in that defendants have been indicted on multiple felony charges. Secondly, the use of an interested prosecutor allows influences other than "justice" or the "public interest" to weigh upon prosecutorial decisions. See John D. Bessler, The Public Interest and the Unconstitutionality of Private Prosecutors, *47 Ark.L.Rev. 511, 576 (1994).* Finally, the burden placed upon government by the elimination of an interested prosecutor is not great. Unlike the tremendous fiscal and administrative burdens that Wilson noted would result if District Attorneys General prosecuted contempt matters, District Attorneys

General already have the responsibility to prosecute obscenity-related charges. See Bessier, supra at 576. Therefore, we conclude that the use of an interested, privately financed prosecutor in the case [*16] at bar does not survive a due process challenge as enunciated in Wilson. See also *State v. Eldridge, 951 S.W.2d at 782-83.*

D. Financial Interest

The state contends Parrish reaps no financial benefits from the resolution of this matter, regardless of its outcome, since he is paid on an hourly basis. We reject this argument. Logic and common sense dictate that private counsel who receives over $300,000 in legal fees from a client to assist in a criminal prosecution indeed has a financial interest in that prosecution. The trial court found that Parrish had a "significant interest in the pecuniary rewards" that would result from his continuance as a prosecutor. We agree.

In summary, the prosecutorial participation by Parrish violates the defendants' due process rights and creates, at the very least, an appearance of impropriety. Disqualification is, therefore, required. *State v. Tate, 925 S.W.2d at 550.* The trial court clearly did not abuse its discretion in requiring Parrish's disqualification.

DISQUALIFICATION OF DISTRICT ATTORNEY GENERAL AND HIS STAFF

The state contends that even if Parrish is disqualified, there is no reason to disqualify the District [*17] Attorney General and his entire staff. Defendants contend the District Attorney General's Office has aligned itself with the special interest group, is not impartial, and must also be disqualified.

A. Zealous Prosecution

Firstly, we reject defendants' argument that the District Attorney General's Office has acted improperly by stating its intention to put sexually oriented establishments out of business. There is nothing improper about zealous prosecution. *Young v. United States ex rel, Vuitton, 481 U.S. at 806, 107 S. Ct. at 2137; Wilson v. Wilson, 984 S.W.2d at 904.* If a prosecutor is "honestly convinced of the defendant's guilt, the prosecutor is free, indeed obliged, to be deeply interested in urging that view by any fair means. True disinterest on the issue of such a defendant's guilt is the domain of the judge and the jury - not the prosecutor." *Wilson v. Wilson, 984 S.W.2d at 904* (quoting *Wright v. United States, 732 F.2d 1048, 1056 (2nd Cir. 1984)).* We find nothing inappropriate in the District Attorney General's Office publicly vowing to prosecute alleged criminal activity and abate an alleged nuisance.

B. Appearance [*18] of Impropriety

However, our analysis does not end there. We must determine whether the actions of the District Attorney General's Office have created an appearance of impropriety. We are constrained to agree with the trial court's conclusion that they have.

Except for the investigatory work done prior to Parrish's involvement in December 1995, the District Attorney General's Office considered Parrish a "Special Assistant District Attorney" and worked closely with him. During this time, the District Attorney General's Office was aware that Parrish's legal fees and substantial expenses were being paid by a special interest group. The state has, at least indirectly, benefited from contributions from that special interest group. There is an appearance of impropriety. [4]n

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[4]n See *People v. Eubanks, 14 Cal. 4th 580, 927 P.2d 310 (Cal. 1997),* holding a crime victim's contribution of $13,000 for the District Attorney's investigation expense justified the disqualification of the District Attorney's Office. The Court based its holding upon a California disqualification statute and declined to reach the due process issue.

C. Private Citizen Analogy

The state argues that the situation at hand is analogous to a private citizen spending his own money and time investigating criminal activity and then presenting that information to the District Attorney General's Office. The state contends that the District Attorney General's Office should not be precluded from pursuing a case simply because its investigators did not produce the evidence with funds allocated to the District Attorney General.

We agree totally with the state's argument that a District Attorney General's Office should not be disqualified under those circumstances. However, that is not the scenario presented by this case. The information was not simply gathered by a private source and turned over to the District Attorney General's Office. The private party in this case was considered a "Special Assistant Attorney General" and acted upon the direction of the District Attorney General. He was paid with funds provided by a special interest group with the knowledge of the District Attorney General's Office. This is not analogous to a private citizen simply turning over information to the District Attorney General's Office.

D. Screening [*20] Methods

The crucial inquiry becomes whether the District Attorney General and/or his entire staff should be disqualified from prosecuting these cases. The state correctly argues that disqualification of one or more prosecutors, due to an actual or apparent conflict, would not necessarily bar the participation of the entire office. See *State v. Tate, 925 S.W.2d at 556; Mattress v. State, 564 S.W.2d at 680.* We must, however, examine whether the challenged attorneys adopted sufficient screening methods to insulate themselves and their work from the remainder of the staff. See *State v. Tate, 925 S.W.2d at 557-58.* In fact, this Court held it to be "incumbent upon the state to prove by clear and convincing evidence that the challenged attorney has been sufficiently screened from the remainder of the staff and its work on the pending case." *Id. at 558* (quoting *State v. Willie Claybrook, 1992 Tenn. Crim. App. LEXIS 89,* C.C.A. No. 3, Gibson County (Tenn. Crim. App. filed February 5, 1992, at Jackson)).

Obviously, prosecutors who worked directly with Parrish should be disqualified. This includes the District Attorney General and other Assistant District Attorneys General. Furthermore, there [*21] is no evidence of any screening procedures having been implemented. According to the testimony, Parrish not only worked with the District Attorney General and certain assistants but also attended

regular staff meetings in the District Attorney General's Office. As in Tate, where the state was unable to establish appropriate screening measures, disqualification of the entire staff "is inevitable." *925 S.W.2d at 557.*

The trial court concluded that "there is no proof in this record just as to what shared confidences may have taken place between [the assistants who worked directly with Parrish and] other members of the staff or what screening measures were taken." Accordingly, the trial court concluded the entire staff should be disqualified. Under our standard of review, we cannot conclude that the trial court abused its discretion in disqualifying the District Attorney General and his entire staff.

DISMISSAL OF THE INDICTMENTS

The trial court concluded that the actions of Parrish and the District Attorney General's Office violated the defendants' due process rights and dismissed the indictments. The state argues that even if disqualification is appropriate, dismissal [*22] of the indictments is not proper. **We agree.**

An indictment valid on its face is not subject to challenge on the ground that the grand jury acted on the basis of inadequate or incompetent evidence. *United States v. Calandra, 414 U.S. 338, 345, 94 S. Ct. 613, 38 L. Ed. 2d*

561 (1974); Costello v. United States, 350 U.S. 359, 363, 76 S. Ct. 406, 409, 100 L. Ed. 397 (1956). "It has long been established that a grand jury can consider evidence obtained in violation of an accused's constitutional rights notwithstanding the fact the evidence will be inadmissible at the ensuing trial." *State v. Dixon, 880 S.W.2d 696, 700 (Tenn. Crim. App. 1992).* In this jurisdiction, the sufficiency and legality of the evidence presented to a grand jury is not the proper subject of judicial review. *State v. Gonzales, 638 S.W.2d 841, 845 (Tenn. Crim. App. 1982); State v. Northcutt, 568 S.W.2d 636, 639 (Tenn. Crim. App. 1978).*

That is not to say that a defendant is never entitled to dismissal of an indictment based upon grand jury deficiencies. For instance, discriminatory exclusion of persons from the grand jury entitles an accused to dismissal of the indictment. See *Vasquez v. Hillery, [*23] 474 U.S. 254, 106 S. Ct. 617, 88 L. Ed. 2d 598 (1986); Ballard v. United States, 329 U.S. 187, 67 S. Ct. 261, 91 L. Ed. 181 (1946).* However, the ordinary remedy for improper evidence being presented to the grand jury is suppression of the evidence at trial. See *United States v. Blue, 384 U.S. 251, 255, 86 S. Ct. 1416, 16 L. Ed. 2d 510 (1966).*

Defendants' remedy lies in a motion to suppress, not in dismissal of the indictments. This Court is not privy to the evidence presented to the grand jury. We are unable to address this question based upon the record before us. We,

therefore, leave this to the trial court's determination upon remand should a motion to suppress be filed by the defendants.

CONCLUSION

This Court in no way questions the motives or integrity of Parrish, DA Pierotti, DA Gibbons, or any staff of the District Attorney General's Office. [5]n The record reflects a zealous prosecutorial effort to pursue alleged criminal violations and alleged nuisances. However, that is not the issue before this Court. At issue is whether a private attorney, specially appointed to assist the District Attorney General in the prosecution of sexually oriented businesses, should [*24] be disqualified from prosecutorial participation if the attorney receives substantial compensation from a private, special interest group. Based upon the facts and circumstances of this case, we hold this is simply impermissible under the Constitution of the

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[5]n In fairness to the District Attorney General's Office, we note this case presents an issue of first impression. Although indicted in December 1996 and January 1997, defendants did not file the motion to disqualify until November 1997. *State v. Eldridge, 951 S.W.2d 775 (Tenn. Crim. App. 1997),* the first Tennessee case to recognize a due process violation relating to the actions of a private prosecutor, was filed May 7, 1997, and published months later.

United States and under the Constitution and statutes of the State of Tennessee. [6]n Further, where the District Attorney General's Office knowingly allows such person to serve in that capacity and knowingly assists in a joint venture of this nature, a trial court does not abuse its discretion by disqualifying the actively participating assistants; and, in the absence of appropriate screening methods, the entire District Attorney General's Office. The remedy for aggrieved defendants under these circumstances, however, is not dismissal of the indictments, but rather the suppression of evidence in the event of trial.

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[6]n We restrict our holding to the facts and circumstances presented in this case. We do not address the constitutional implications of Tenn. Code Ann. § 8-7-401 allowing private counsel to act as co-counsel with the District Attorney General "in trying cases." See *State v. Eldridge, supra; State v. Bennett, 798 S.W.2d 783 (Tenn. Crim. App. 1990)*(holding the statute constitutional).

For these reasons, we affirm the judgment of the trial court disqualifying Special Assistant District Attorney Larry Parrish, the Shelby County District Attorney General and his entire staff, but reverse the order dismissing the indictments.

JOE G. RILEY, JUDGE

CONCUR:

JOHN H. PEAY, JUDGE

(Not participating)
JAMES C. BEASLEY, SR., SPECIAL JUDGE

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

STEVEN CRAIG COOPER, ET AL.,	)	
Plaintiffs-Appellants,	)	
v.	)	**ORDER**
LARRY E. PARRISH, ET AL.,	)	
Defendants-Appellees.	)	

BEFORE: RYAN, MOORE, and GIBSON[1], Circuit Judges.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

6th Circuit
Court of Appeals
Filed 5/12/00
Leonard Green,
Clerk

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green

Leonard Green, Clerk

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[1]Hon. John R. Gibson, Senior United States Circuit Judge for the Eighth Circuit Court of Appeals, sitting by designation.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION AT MEMPHIS

STEVEN CRAIG COOPER,	)	
SOUTHERN	)	
ENTERTAINMENT	)	
MANAGEMENT CO., INC.,	)	
777 MEMPHIS, INC.,	)	Western Dist. of Tenn. Filed 7/11/97
CLUB TIFFANY, INC.,	)	
and **NIGHT MOVES OF**	)	
MEMPHIS, INC.,	)	
Plaintiffs,	)	
vs.	)	**No. 97-2625-TU-A**
	)	
LARRY E. PARRISH,	)	**JURY DEMAND**
JOHN W. PIEROTTI,	)	
AMY P. WEIRICH,	)	
JENNIFER S. NICHOLS,	)	
D. J. ALISSANDRATOS,	)	
MARK GLANKLER,	)	
JOHN SIMMONS,	)	
and **DAVID MARTELLO,**	)	
in their individual	)	
capacities, and **WILLIAM**	)	
B. GIBBONS, in his	)	
official capacity as	)	
DISTRICT ATTORNEY	)	
GENERAL for the	)	
THIRTIETH JUDICIAL	)	
DISTRICT of the **STATE**	)	
OF TENNESSEE,	)	
Defendants.	)	

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Come now the Plaintiffs, Steven Craig Cooper, Southern Entertainment Management Company, Inc., 777 Memphis, Inc., Club Tiffany, Inc., and Night Moves of Memphis, Inc., pursuant to 42 United States Code § 1983 and the common law of the State of Tennessee, and sue the Defendants Larry E. Parrish, John W. Pierotti, Amy P. Weirich, Jennifer S. Nichols, Mark Glankler, John Simmons and David Martello, each in his or her individual capacity, for compensatory and punitive damages to redress these Defendants' deprivation of the Plaintiffs' constitutional rights under color of law. The Plaintiffs further sue the Defendant William B. Gibbons in his official capacity as District Attorney General for the Thirtieth Judicial District of the State of Tennessee for injunctive relief to prevent future deprivation of constitutional rights by this Defendant, his employees and agents, and persons acting in concert with the Defendant Gibbons.

I. JURISDICTION AND PARTIES:

1) This Court has subject matter jurisdiction of the federal claims asserted herein pursuant to 28 United

States Code § 1331 (federal question), and 28 U.S.C. § 1343 (3) and (4) (civil rights).

2) This Court has supplemental jurisdiction under 28 U.S.C. § 1367(a) to hear all claims that arise under Tennessee law under the same nucleus of operative facts as the federal claims.

3) The Plaintiff, Steven Craig Cooper, is a resident and citizen of this judicial district. He is an officer and owner of the corporate Plaintiffs in this case.

4) The Plaintiff, Southern Entertainment Management Company, Inc., is a Tennessee corporation having its principal place of business in this judicial district.

5) The Plaintiff, 777 Memphis, Inc., is a Tennessee corporation having its principal place of business in this judicial district.

6) The Plaintiff, Club Tiffany, Inc., is a Tennessee corporation having its principal place of business in this judicial district.

7) The Plaintiff, Night Moves of Memphis, Inc., is a Tennessee corporation having its principal place of business in this judicial district.

8) Each of the Plaintiffs, individually or through agents and employees thereof, is or has been regularly engaged, directly or indirectly, in the presentation of nude or semi-nude dancing which enjoys some measure of protection under the First Amendment to the United States Constitution.

9) The Defendant, Larry E. Parrish, on information and belief is a resident and citizen of this judicial district. At all times relevant to this action, this Defendant has been an attorney licensed by the State of Tennessee and engaged in the private practice of law.

10) The Defendant, John W. Pierotti, on information and belief is a resident and citizen of this judicial district. This Defendant is an attorney licensed by the State of Tennessee and is presently engaged in the private practice of law. This Defendant, during much of the time of the events complained of herein, held elective office as District Attorney General for the Thirtieth Judicial District of the State of Tennessee. While holding such office this Defendant served as the chief law enforcement officer of the State of Tennessee for the Thirtieth Judicial District.

11) The Defendant, Amy P. Weirich, on information and belief is a resident and citizen of this judicial district. This Defendant is an attorney licensed by the State of Tennessee and at all times relevant to this lawsuit has held appointive office as an Assistant District Attorney General acting ostensibly under the supervision of the Defendant Pierotti or the Defendant Gibbons. In this

capacity she has acted in concert with the Defendants Parrish and Pierotti, among others, to deprive the Plaintiffs of constitutional rights under color of law.

12) The Defendant, Jennifer S. Nichols, on information and belief is a resident and citizen of this judicial district. This Defendant is an attorney licensed by the State of Tennessee and at all times relevant to this lawsuit has held appointive office as an Assistant District Attorney General acting ostensibly under the supervision of the Defendant Pierotti or the Defendant Gibbons. In this capacity she has acted in concert with the Defendants Parrish and Pierotti, among others, to deprive the Plaintiffs of constitutional rights under color of law.

13) The Defendant, D. J. Alissandratos, on information and belief is a resident and citizen of this judicial district. This Defendant is an attorney licensed by the State of Tennessee and at all times relevant to this lawsuit has held elective office as Chancellor for the Thirtieth Judicial District. The Plaintiffs aver that this Defendant, while acting in a non-judicial capacity and at such time as no lawsuit was then pending before him, aided and abetted and acted in concert with the Defendants Parrish and Pierotti, among others, in furtherance of these Defendants' conspiracy to deprive the Plaintiffs of constitutional rights under color of law. The Plaintiffs do not sue based upon any act(s) taken by the Defendant Alissandratos while acting in his judicial capacity.

14) The Defendant, Mark Glankler, on information and belief is a resident and citizen of this judicial district. At all times relevant to this action he has been employed as an investigator in the office of the District Attorney General for the Thirtieth Judicial District acting ostensibly under the supervision of the Defendant Pierotti or the Defendant Gibbons. In this capacity he has acted in concert with the Defendants Parrish and Pierotti, among others, to deprive the Plaintiffs of constitutional rights under color of law.

15) The Defendant, John Simmons, on information and belief is a resident and citizen of this judicial district. At all times relevant to this action he has been employed as an agent of the Tennessee Bureau of Investigation. In this capacity he has acted in concert with the Defendants Parrish and Pierotti, among others, to deprive the Plaintiffs of constitutional rights under color of law.

16) The Defendant, David Martello, on information and belief is a resident and citizen of this judicial district. At all times relevant to this action he has been employed by the Memphis Police Department as a supervisory officer. In this capacity he has acted in concert with the Defendants Parrish and Pierotti, among others, to deprive the Plaintiffs of constitutional rights under color of law.

17) The Defendant, William B. Gibbons, on information and belief is a resident and citizen of this

judicial district. This Defendant is an attorney licensed by the State of Tennessee and holds appointive office as District Attorney General for the Thirtieth Judicial District of the State of Tennessee, having succeeded the Defendant Pierotti in that capacity on or about November 1, 1996.

18) The Plaintiffs sue the Defendant Gibbons in his official capacity only seeking prospective, injunctive relief. The Plaintiffs sue all other Defendants in his or her individual capacity for damages.

II. FACTS SHOWING PLAINTIFFS' ENTITLEMENT TO RELIEF:

19) Each of the Plaintiffs, individually or through agents and employees, is or has been regularly engaged in the presentation of nude or semi-nude dancing of an expressive nature which enjoys some measure of protection under the First Amendment to the United States Constitution. The Plaintiffs currently operate or in the past have operated nightclubs or showbars featuring such dancing in Memphis or Shelby County, Tennessee.

20) A nightclub or showbar known as Tiffany's Cabaret is located at 3659 South Mendenhall in Memphis. A nightclub or showbar known as the Gold Club is located at 777 North White Station Road in Memphis. A nightclub or showbar known as the Menz Club, which was located at 3918 Winchester in Memphis, has ceased operation as a

result of the activities of the Defendants complained of herein. The Plaintiff Cooper owns each of these parcels of real property in fee simple, and one of the corporate Plaintiffs owns a leasehold interest in each such property.

21) The Plaintiffs aver on information and belief that the Defendants Parrish, Pierotti, Weirich, Nichols, Alissandratos, Glankler, Simmons, Martello and others unlawfully combined and conspired to prevent the Plaintiffs from presenting constitutionally protected nude or semi-nude expressive dancing at the locations identified in ¶20 above.

22) The Plaintiffs aver on information and belief that the Defendants Parrish, Pierotti, Weirich, Nichols, Alissandratos, Glankler, Simmons, Martello and others unlawfully combined and conspired to deprive the Plaintiffs of possession and use of real and personal property without due process of law, as set forth more particularly below.

23) The Plaintiffs aver on information and belief that the Defendants Parrish, Pierotti, Weirich, Nichols, Alissandratos, Glankler, Simmons, Martello and others unlawfully combined and conspired to injure the Plaintiffs in their trade or business in order to make it economically unfeasible for the Plaintiffs to present entertainment protected by the First Amendment and to thereby chill the Plaintiffs' exercise of rights of free expression.

24) The Plaintiffs aver on information and belief that the wellspring of the above-references conspiracies occurred contemporaneous with a series of meetings among

some or all of the Defendants Parrish, Pierotti, Weirich and Nichols occurring as early as December 1995. On information and belief, the Defendants Pierotti, Weirich and/or Nichols then sought the assistance of the Defendant Parrish relative to taking legal action against several nightclubs or showbars offering nude or semi-nude expressive dancing, including those operated by the Plaintiffs at bar.

25) The Plaintiffs aver that at all relevant times up until July 11, 1996, the Defendant Parrish was a private individual acting in concert with the Defendants Pierotti, Weirich, Nichols, other Defendants and/or other government personnel. On information and belief, Mr. Parrish then had no official standing or position with the District Attorney General's office nor any other governmental body or entity, and did not arguably hold any governmental position until he was sworn as a so-called Special Assistant District Attorney on July 11, 1996.

26) On information and belief, the activities of the Defendant Parrish have been lavishly funded by private individuals and groups who have donated money for the purpose of eliminating or severely curtailing the availability of erotic dancing in Memphis and Shelby County. This fundraising effort has been orchestrated by the Defendant Parrish for his pecuniary gain. The Defendants Pierotti and Gibbons have endorsed and encouraged this unusual fundraising effort in concert with the Defendant Parrish, thus clothing the Defendant Parrish's fundraising efforts, as

well as Mr. Parrish's efforts to injure the Plaintiffs, with color of law.

27) The Plaintiffs aver on information and belief that the Defendant Parrish, from about December 1995 until July 11, 1996, notwithstanding his lack of any official capacity or authorization to do so except perhaps as a private vigilante, undertook to investigate and prepare spurious legal actions which on July 11, 1996 were filed in the Chancery Court for the Thirtieth Judicial District against several nightclubs or showbars offering nude or semi-nude expressive dancing, including those operated by the Plaintiffs at bar.

28) On information and belief, the Defendant Pierotti acquiesced in and cooperated with the Defendant Parrish's private vigilante investigation and assigned the Defendants Weirich, Nichols and Glankler to act in concert with and at the direction of Mr. Parrish in regard thereto. On information and belief, the Defendant Simmons also actively participated in this investigation along with the other Defendants named in this paragraph.

29) On information and belief, the Defendant Parrish on or about July 3, 1996 arranged one or more meetings among the Defendants Parrish, Pierotti, Weirich, Nichols and Alissandratos for the purpose of privately (and unethically) engaging in *ex parte* communications regarding lawsuits which were to be filed later related to nightclubs or showbars offering nude or semi-nude expressive dancing, including those operated by the Plaintiffs at bar. On

information and belief, the first of such meetings occurred on Sunday, July 7, 1996 with the Defendants Parrish, Pierotti, Weirich, Nichols and Alissandratos.

30) On information and belief, some or all of the Defendants Parrish, Pierotti, Weirich and Nichols engaged in numerous *ex parte* discussions with the Defendant Alissandratos regarding tactics and planning of the lawsuits which were later to be filed. On information and belief, some of these communications occurred at the private residence of the Defendant Alissandratos.

31) On information and belief, the Defendant Alissandratos acted as a *de facto* counselor or legal advisor to the Defendant Parrish and his confederates with regard to the lawsuits which were later to be filed. On information and belief, the Defendant Alissandratos gave *ex parte* legal advice as to how the pleadings and/or supporting documentation in such lawsuits should be drafted so as to ensure issuance of *ex parte* orders to close the Plaintiffs' nightclubs or showbars.

32) On information and belief, the pleadings and supporting documentation filed on July 11, 1996 by the Defendants Parrish, Weirich and Nichols on behalf of the State of Tennessee on relation of the Defendant Pierotti with reference to the Plaintiffs' nightclubs contained additions, deletions and alterations made at the direction of the Defendant Alissandratos during the *ex parte* discussions of July 7 through July 10, 1996.

33) The Plaintiffs aver that the actions of the Defendant Alissandratos referenced in ¶¶28--31, which occurred prior to the July 11, 1996 filing of pleadings with regard to the Plaintiffs' nightclubs, constitute non-judicial acts. No lawsuit was then pending, such that the Defendant Alissandratos's *ex parte* discussions with and his giving of gratuitous legal advice to the Defendants Parrish, Pierotti, Weirich and Nichols did not involve resolution of disputes between parties who had then invoked the jurisdiction of a court. The injured Plaintiffs were without any avenue for appellate review of the Defendant Alissandratos's actions undertaken prior to July 11, 1996.

34) The Plaintiffs expressly disclaim any intention to seek to impose liability upon or to recover damages from the Defendant Alissandratos for any action or omission of this Defendant occurring subsequent to the filing of pleadings with regard to the Plaintiffs' nightclubs on July 11, 1996.

35) On July 11, 1996 the Defendants Parrish, Weirich and Nichols filed on behalf of the State of Tennessee on relation of the Defendant Pierotti a series of prolix pleadings against various *in rem* and *in personam* Defendants, including the instant Plaintiffs, alleging the existence of public nuisances at, among other locations, premises municipally known as 777 N. White Station Road (Chancery Docket No. 107842-3), 3918 Winchester (Chancery Docket No. 107843-1(3)), and 3659 South Mendenhall (Chancery Docket No. 107849-2(3)).

36) While these pleadings are not a model of clarity and appear to be intended and designed to obfuscate, a careful reading of such pleadings indicates that the Defendants Pierotti, Parrish, Weirich and Nichols sought, among other requested relief, the forced closure *pendente lite* of the Plaintiffs' businesses and the forfeiture of the Plaintiffs' property to the State.

37) Upon filing of the complaints referenced in ¶35 above, the Defendants Pierotti, Parrish, Weirich and Nichols importuned the Defendant Alissandratos to issue an *ex parte* order in each case purporting to authorize the Defendants Glankler and Simmons to enter and take by force certain real property municipally known as 3658 South Mendenhall. No order, search warrant nor any other kind of judicial process authorized the arrest or seizure of any other specifically identifiable real or personal property.

38) In fact, there exists no real property in Memphis or Shelby County municipally known as 3658 South Mendenhall. The Plaintiffs aver that all Defendants knew or reasonably should have known that none of the Plaintiffs' businesses is located at 3658 South Mendenhall.

39) Notwithstanding their palpable lack of judicial authorization therefor, law enforcement agents forcibly occupied the Plaintiffs' businesses at 777 N. White Station Road, 3918 Winchester and 3659 South Mendenhall and dispossessed the Plaintiffs of these properties. On information and belief, the Defendants Parrish and Pierotti

directed or supervised this forcible occupation of the Plaintiffs' properties.

40) On information and belief, each of the Defendants Weirich, Nichols, Glankler, Simmons and Martello participated in the unlawful forcible occupation of the Plaintiffs' properties or directed or supervised law enforcement personnel in effecting the challenged seizures.

41) On information and belief, twenty (20) to forty (40) law enforcement officers went on July 11, 1996 at approximately 6:00 p.m. to each of the Plaintiffs' businesses at 777 N. White Station Road, 3918 Winchester and 3659 South Mendenhall. The Plaintiffs aver that the events that ensued at each nightclub resulted directly from the supervision, direction and control of the Defendants Parrish and Pierotti.

42) At each nightclub a law enforcement officer announced to all present inside that the club was being seized and that all employees, patrons, and customers must remain where they were until they were released by the authorities.

43) At each nightclub all persons inside the club were detained by law enforcement officers without cause for periods ranging from one to five hours.

44) During the period when the people inside the nightclubs were being detained, law enforcement officers refused to allow various detainees to use a telephone to call a spouse or relative, even when a detained person specifically requested to make such a call because such

detainee was expected and was overdue. Other detainees were refused permission to go to their vehicles to obtain identification which law enforcement authorities had demanded. Still other detainees were temporarily refused permission to move about within the nightclub for the purpose of visiting a restroom.

45) In general, during the period when the people inside the nightclubs were being detained, such people were effectively in custody and under the direction of law enforcement authorities at each club and were allowed to leave only after complying with the orders of law enforcement officers.

46) At each nightclub, law enforcement officers conducted a search of the premises without a search warrant.

47) At each nightclub, law enforcement officers detained persons therein for approximately forty-five (45) minutes to an hour before announcing that the detainees would be allowed to leave only upon each individual's producing personal identification and allowing police authorities to copy the same.

48) At each nightclub, each person inside the club at the time of the seizure, including patrons, customers and employees, was required to produce identification, one at a time. The identification was then recorded or photo-copied, and the individual was then handed a document denominated as a subpoena and order to report at a later date to a State government office in Memphis.

49) During the period when people were being detained inside the nightclubs, when new customers arrived at the various clubs, some would be allowed to enter the club, where they were then detained and required to produce identification and be served with a purported subpoena before being allowed to leave.

50) The purported subpoenas served upon persons insider the Plaintiffs' businesses were in fact not valid subpoenas issued according to law, but instead were bogus documents employed by the Defendant Parrish and his confederates, intended to coerce the recipients into appearing at a state office in order that Mr. Parrish or other Defendants or persons working under the supervision of the Defendants could take an *ex parte* sworn statement from the recipients without notice to opposing parties. No notice(s) of deposition were issued to opposing counsel in the civil actions regarding the Plaintiffs' businesses.

51) At no time was any Plaintiff, nor any attorney for any Plaintiff, afforded even a modicum of notice or opportunity to be heard regarding the propriety of the actions and omissions complained of in ¶¶27--50 above.

52) Law enforcement officers acting at the direction and under the control of the Defendants Parrish and Pierotti seized and padlocked the buildings housing the Plaintiffs' businesses, and these businesses were forced to suspend operations and remained closed until July 25, 1996, after which date the United States District Court to which the nuisance actions had been removed, the Honorable Jon

P. McCalla presiding, required the Defendants to relinquish control of these businesses to the Plaintiffs.

53) In addition to the seizure of the nightclubs, law enforcement officers forcibly occupied premises owned by the Defendant Cooper located at 995 South Yates and denied Mr. Cooper access to this property. The corporate Plaintiff Southern Entertainment Management Co., Inc., which is operated on or about this property, was also denied access thereto. This property was not an *in rem* defendant in any civil action and was not specifically identified in any pleading filed with the Chancery Court.

54) The property at 995 South Yates housed offices for several businesses in other states with which Mr. Cooper is associated. The operation of these businesses, which had no connection to any alleged nuisance in Memphis or Shelby County, was severely disrupted.

56) After the Defendants were unsuccessful in their attempt to retain control of the property which they had (temporarily) stolen from the Plaintiffs, some or all of the Defendants caused the Plaintiff Cooper and several employees of the corporate Plaintiffs to be charged criminally with various offenses, apparently on theories similar to those advanced in the since-aborted public nuisance actions.[1]

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[1]The Plaintiffs do not seek to recover damages for any Defendant's prosecution of criminal charges in his or her role as an advocate for the State of Tennessee. *See,*

57) The public nuisance actions were dismissed without prejudice on or about March 14, 1997 pursuant to the Defendants Gibbons, Parrish, Weirich and Nichols' having previously submitted a notice of voluntary nonsuit. The instant Plaintiffs had objected to the dismissal being without prejudice and had urged that such dismissal be with prejudice.

58) Tenn. Code Ann. § 29-3-107(a) (1980) requires that no action to abate a nuisance shall be voluntarily dismissed except upon a written, sworn statement of the relator or relators of the reasons for dismissal. In the notice of voluntary nonsuit, the Defendant Gibbons proffered only the following as grounds for dismissal:

> As a result of certain cases now pending in the Criminal Court of Shelby County, 30th Judicial District, factually related to the claims alleged herein, the State of Tennessee, on relation of

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Imbler v. Pachtman, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976). The belated institution of criminal charges, however, has a significant bearing upon whether the July 11, 1996 actions of the Defendants Parrish, Pierotti, Weirich and Nichols is advocatory conduct (for which these Defendants could slither into the shade of the *Imbler* umbrella of absolute immunity) or instead constitutes investigatory conduct (to which absolute immunity does not attach). *See, Joseph v. Patterson,* 795 F.2d 549 (6th Cir. 1986).

William L. Gibbons, the District Attorney General for the 30th Judicial District, voluntarily dismisses this cause of action. In the interests of judicial economy, any additional claims of which the State has knowledge, including but not limited to claims made pursuant to Tennessee Code Annotated § 29-3-101 et seq., will be included as part of the presently pending criminal proceedings.

59) The instant Plaintiffs are reasonably fearful that the Defendants Gibbons, Parrish, Weirich and/or Nichols or persons acting in concert with these Defendants will refile some or all of the actions which have been dismissed without prejudice and that these Defendants will again unlawfully and unethically importune a Tennessee court to order the forcible dispossession of the Plaintiffs' property, which would necessarily result in preventing the Plaintiffs' exercise of constitutionally protected rights of free expression.

60) When the Plaintiffs' businesses resumed operation after the forced shutdown, public patronage of these businesses, as well as revenues and profits inuring to the Plaintiffs, sharply decreased compared to the time before the government occupation of the nightclubs. The Plaintiff aver that this loss of custom is a direct result of the coercive and intimidating tactics employed by the Defendants as described above.

61) During the time that the Plaintiffs' businesses were shut down and the premises occupied by government

agents, the Plaintiffs ceased presentation of constitutionally protected expressive dancing.

62) As a result of the Defendants' conduct, the Plaintiff Cooper has been deprived of the beneficial use of his real property without due process of law, he has lost profits from his businesses, including but not limited to the businesses operated by the corporate Plaintiffs, and the value of his ownership interest in the corporate Plaintiffs has been diminished.

63) As a result of the Defendants' conduct, the corporate Plaintiffs have been denied possession and beneficial use of personal property, including but not limited to their leasehold possessory interest in real property, fixtures, equipment, records, etc. without due process of law.

64) The Plaintiffs aver that the warrantless search and forcible occupation and arrest of the Plaintiffs' property by the Defendants constitutes unreasonable searches and seizures.

65) The Plaintiffs aver that the conduct of the Defendants sued in their individual capacity was motivated by evil motive or intent or, in the alternative, demonstrates such reckless or callous indifference to the Plaintiffs' federal constitutional rights so as to make appropriate an award of exemplary or punitive damages.

A. First cause of action:

66) The actions and omissions of the Defendants Parrish, Pierotti, Weirich, Nichols, Alissandratos, Glankler, Simmons and Martello complained of herein, under color of law, deprived the Plaintiffs of their rights of free expression protected by the First Amendment to the United States Constitution.

67) The Plaintiffs seek an award of compensatory and punitive damages against these Defendants for deprivation of First Amendment rights.

B. Second cause of action:

68) The actions and omissions of the Defendants Parrish, Pierotti, Weirich, Nichols, Glankler, Simmons and Martello complained of herein, under color of law, deprived the Plaintiffs of their right to be free of unreasonable searches and seizures protected by the Fourth Amendment to the United States Constitution.

69) The Plaintiffs seek an award of compensatory and punitive damages against these Defendants for deprivation of Fourth Amendment rights.

C. Third cause of action:

70) The actions and omissions of the Defendants Parrish, Pierotti, Weirich, Nichols, Alissandratos, Glankler, Simmons and Martello complained of herein, under color of law, deprived the Plaintiffs of property without procedural

due process of law in contravention of the Fourteenth Amendment to the United States Constitution.

71) The Plaintiffs seek an award of compensatory and punitive damages against these Defendants for deprivation of Fourteenth Amendment rights.

D. Fourth cause of action:

72) The actions and omissions of the Defendants Parrish, Pierotti, Weirich, Nichols, Glankler, Simmons and Martello, under color of law, in regard to the manner in which the seizure of the Plaintiffs' property was effected violated substantive due process guaranties in contravention of the Fourteenth Amendment to the United States Constitution.

73) The Plaintiffs seek an award of compensatory and punitive damages against these Defendants for deprivation of Fourteenth Amendment rights.

E. Fifth cause of action:

74) The actions and omissions of the Defendants Parrish, Pierotti, Weirich, Nichols, Alissandratos, Glankler, Simmons and Martello complained of herein evince a combination between two or more persons to accomplish by concert an unlawful purpose, or to accomplish a purpose not in itself unlawful by unlawful means. Such a civil

conspiracy is actionable in tort under Tennessee common law.

75) The Plaintiffs seek an award of compensatory and punitive damages against these Defendants for the tort of civil conspiracy.

F. Sixth cause of action:

76) The actions and omissions of the Defendants Parrish, Pierotti, Weirich, Nichols, Alissandratos, Glankler, Simmons and Martello complained of herein evince a conspiracy to interfere with the Plaintiffs' right to conduct a lawful business, which is actionable in tort under Tennessee common law.

77) The Plaintiffs seek an award of compensatory and punitive damages against these Defendants for the tort of conspiracy to injury another's business.

G. Seventh cause of action:

78) To the extent that any process of court issued on July 11, 1996 was on its face lawful, the actions and omissions of the Defendants Parrish, Pierotti, Weirich, Nichols, Glankler, Simmons and Martello indicate that such process was used to obtain a result that such process was not intended to effect, that is, punishment of the Plaintiffs for their exercise of rights of free expression.

79) The Plaintiffs seek an award of compensatory and punitive damages against these Defendants for the tort of abuse of process.

H. Eighth cause of action:

80) In that the dismissal of the public nuisance actions was without prejudice, the Plaintiffs fear that the Defendants Gibbons, Parrish, Weirich and/or Nichols will refile pleadings in such civil actions and thereby subject the Plaintiffs to a repeat of the deprivations of their constitutional rights which occurred during July 1996.

81) The Plaintiffs seek preliminary and permanent injunctions prohibiting the Defendants Gibbons, Parrish, Weirich and Nichols, their agents, servants, employees and all person acting in concert with these Defendants, from proceeding in any court to procure any form of process related to the Plaintiffs' businesses which would have the effect of inhibiting the Plaintiffs' exercise of constitutional rights or interfering with operation of the Plaintiffs' business(es) without giving the Plaintiffs and their attorney(s) notice and an opportunity to be heard prior to the issuance of such process.

III. DEMAND FOR RELIEF:

THE FOREGOING PREMISES CONSIDERED, the Plaintiffs Steven Craig Cooper, Southern Entertainment Management Company, Inc., 777 Memphis, Inc., Club Tiffany, Inc., and Night Moves of Memphis, Inc. respectfully request the following relief:

A) That process issue and the Defendants be summoned to answer the averments of this complaint;

B) That they have judgment against the Defendants;

C) That this case be tried by a jury as to all issues triable thereby;

D) That they be awarded compensatory and punitive damages against the Defendants Parrish, Pierotti, Weirich, Nichols, Alissandratos, Glankler, Simmons and Martello in an amount appropriate according to the proof in this cause;

E) That preliminary and permanent injunctions issue prohibiting the Defendants Gibbons, Parrish, Weirich and Nichols, their agents, servants, employees and all person acting in concert with these Defendants, from proceeding in any court to procure any form of process related to the Plaintiffs' businesses which would have the effect of inhibiting the Plaintiffs' exercise of constitutional rights or interfering with operation of the Plaintiffs' business(es) without giving the Plaintiffs and their

attorney(s) notice and an opportunity to be heard prior to the issuance of such process;

F) That the costs of this action, including reasonable attorney's fees pursuant to 42 U.S.C. § 1988, be assessed against the Defendants; and

G) That they have such further or general relief as may be appropriate.

Respectfully submitted,

/s/ John E. Herbison
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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION AT MEMPHIS

Western Dist.
of Tenn.
Filed 1/20/98

AMANDA HOLLAND, et al., *Plaintiffs,*	)	
vs.	)	**Civil No.97-2626-D/BRE**
LARRY E. PARRISH, et al., *Defendants.*	)	

AMENDED COMPLAINT

Come now the Plaintiffs, by and through counsel, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, ("A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . .") and *Veney v. Hogan,* 70 F.3d 917 (6th Cir. 1995), and submit this amended complaint setting forth in greater detail their cause(s) of action against the Defendants herein.

This amended complaint is supplementary to the averments of the original complaint.

NATURE OF ACTION

1. This is an action brought by and on behalf of employees, patrons and customers of eight Shelby County, Tennessee nightclubs who, under color of law, were illegally detained and searched, were forced involuntarily to provide personal information, were deprived of an opportunity to earn a livelihood and be gainfully employed, and in some cases, were deprived of their right to engage in constitutionally protected dance performances, by various officials of the Office of The District Attorney General for the Thirtieth Judicial District of Tennessee, and by various officers and agents of the Memphis Police Department, the Shelby County Sheriff's Department, the Tennessee Bureau of Investigation, and by other unknown law enforcement agents acting under the direction and control and with the authorization, approval or acquiescence of some or all of the instant Defendants. The illegal detention, search, and other illegal deprivations were imposed without valid legal authority and in violation of the constitutional rights of the named Plaintiffs and all other persons similarly situated.

JURISDICTION AND VENUE

2. This Court has jurisdiction founded upon 28 U.S.C., Sections 1331 and 1343. This action arises under 42 U.S.C., Section 1983.

3. Venue lies in The Western District of Tennessee because each of the Defendants reside or engaged in substantive relevant conduct in said district and all of the actions complained of occurred within said federal judicial district.

PARTIES

4. Plaintiff, **AMANDA HOLLAND**, was an employee at the Gold Club at 777 North White Station in Shelby County, Tennessee on July 11, 1996. She was illegally detained on July 11, 1996 at the Gold Club where unknown-named law enforcement officers, acting under the supervision and with the authorization, approval or acquiescence of Defendants Parrish and Pierotti, entered the nightclub and caused all employees, patrons, and customers in the club to be illegally detained. Holland was detained without legal authority or justification. She was involuntarily interrogated, and she was forced to submit to a search of her personal property. Holland was not charged with any criminal offense, and after being detained from a

period of hours, was released. The improved real property housing the nightclub where this Plaintiff worked was seized by Defendants and held under Defendants' control for fourteen days, during which time this Plaintiff was unable to earn a livelihood working, at said nightclub. This Plaintiff suffered lost income as a result of the seizure of the nightclub.

5. Plaintiff, **DAVID S. TUBBS**, was a manager at Tiffany's Cabaret at 3659 Mendenhall in Memphis, Tennessee on July 11, 1996. As he attempted to enter Tiffany's Cabaret on Thursday, July 11, 1996, he was stopped by law enforcement officers and prevented from entering the nightclub. The improved real property housing the nightclub where this Plaintiff worked was seized by Defendants and held under Defendants' control for fourteen days, during which time Plaintiff Tubbs was unable to earn a livelihood working at said nightclub.

6. Plaintiff, **ASHLEY BURNETTE**, was an employee of Tiffany's Cabaret at 3659 Mendenhall in Memphis, Tennessee on July 11, 1996. She was illegally detained on July 11, 1996 at Tiffany's Cabaret where unknown-named law enforcement officers, acting under the supervision and with the authorization, approval or acquiescence of Defendants Parrish and Pierotti, entered the nightclub and caused all employees, patrons, and

customers in the club to be illegally detained. This Plaintiff was detained without legal authority or justification. She was involuntarily interrogated, and she was forced to submit to a search of her personal property. She was not charged with any criminal offense, and after being detained for a period of hours, was released.

7. Plaintiff, **JEFFERY H. TONEY**, was a manager at Tiffany's Cabaret at 3659 Mendenhall in Memphis, Tennessee on July 11, 1996. He was illegally detained at Tiffany's Cabaret on Thursday, July 11, 1996, when unknown-named law enforcement officers, acting under the supervision and with the authorization, approval or acquiescence of Defendants Parrish and Pierotti, entered the nightclub and caused all employees, patrons and customers in the club to be illegally detained. This Plaintiff was detained without legal authority or justification. He was involuntarily interrogated. His person and personal property, including a locked briefcase, were subjected to an illegal search. He was wrongfully incarcerated. The improved real property housing the nightclub where this Plaintiff worked was seized by Defendants and held under Defendants' control for fourteen days, during which time this Plaintiff was unable to earn a livelihood working at said nightclub. This Plaintiff suffered lost income as a result of the seizures of the nightclub.

8. Plaintiff, **TAMMIE WILSON**, was employed as an entertainer at Tiffany's Cabaret at 3659 Mendenhall in Memphis, Tennessee on July 11, 1996. She was illegally detained on Thursday, July 11, 1996, at Tiffany's Cabaret when unknown-named law enforcement officers, acting under the supervision and with the authorization, approval or acquiescence of Defendants Parrish and Pierotti, entered the nightclub and caused all employees, patrons, and customers in the club to be illegally detained. This Plaintiff was detained without legal authority or justification. She was involuntarily interrogated, and she was forced to submit to a search of her personal property. She was not charged with any criminal offense, and after being detained for a period of hours, was released. The improved real property housing the nightclub where this Plaintiff worked was seized by Defendants and held under Defendants' control for fourteen days, during which time Plaintiff was unable to earn a livelihood working at said nightclub. Plaintiff suffered lost income as a result of the seizures of the nightclub. Also, as a result of the seizure of said nightclub, this Plaintiff was deprived of the opportunity to engage in performing her dance routines at said nightclub, the performance of which is a type of artistic expression protected by the First Amendment of the United States Constitution.

9. Plaintiff, **ALLISON RODGERS**, was employed as a waitress/server at the Gold Club at 777 North White Station in Shelby County, Tennessee on July 11, 1996. She was not in the club when it was seized by Defendants on July 11, 1996, but because of the seizure, for the fourteen days after July 11, 1996, she was unable to earn a livelihood working at said nightclub. This Plaintiff suffered lost income as a result of the seizure of the nightclub. Also because of the club's seizure and because persons inside the club including patrons and customers, were illegally detained, and because of the attendant publicity, when the Gold Club and the other seized nightclubs reopened on or about July 26, 1996, far fewer people patronized the Gold Club and the other seized nightclubs. As a result, this Plaintiff suffered lost income due to the reduced volume of business directly caused by Defendants' conduct.

10. Plaintiff, **RONNIE BROTHERS**, was employed as a receptionist at Tiffany's Cabaret at 3659 S. Mendenhall in Memphis, Tennessee on July 11, 1996. She was illegally detained on July 11, 1996 at Tiffany's Cabaret when unknown-named law enforcement officers, acting under the supervision and with the authorization, approval or acquiescence of Defendants Parrish and Pierotti, entered the nightclub and caused all employees, patrons, and customers in the club to be illegally detained. She

was detained without legal authority or justification. She was involuntarily interrogated and forced to submit to a search of her personal property. She was not charged with any criminal offense, and after being detained for a period of hours was released. The nightclub where she worked was seized by Defendants' and held under Defendants' control for fourteen days, during which time this Plaintiff was unable to earn a livelihood working at said nightclub. This Plaintiff suffered lost income as a result of the seizure of the nightclub.

11. Plaintiff, **ROSALIND DEARING**, was employed as an entertainer at Tiffany's Cabaret at 3659 Mendenhall in Memphis, Tennessee on July 11, 1996. She was not in the club when it was seized by Defendants, but because of the seizure, for the fourteen days after July 11, 1996, she was unable to earn a livelihood working at said nightclub. This Plaintiff suffered lost income as a result of the seizure of the nightclub. This Plaintiff also suffered lost income after the club reopened as a direct result of Defendants' seizure of the club, the illegal detention of patrons, the publicity attendant thereto, and the resulting drop in the volume of business after reopening. Also as a result of Defendants' seizure of said nightclub, this Plaintiff was deprived of the opportunity to engage in performing her dance routine at said nightclub, the performance of which is

a type of artistic expression protected by the First Amendment of the United States Constitution.

12. Plaintiff, **CYNTHIA COOPER**, was employed as a manager at The Gold Club at 777 North White Station in Shelby County, Tennessee on July 11, 1996. She was illegally detained on July 11, 1996 at the Gold Club when unknown-named law enforcement officers, acting under the supervision and with the authorization, approval or acquiescence of Defendants Parrish and Pierotti, entered the nightclub and caused all employees, patrons, and customers in the club to be illegally detained. She was detained without legal authority or justification for over three and a half hours. She was involuntarily interrogated and forced to submit to a search of her personal property. She was not charged with any criminal offense, and after being detained for a period of hours, was released. The nightclub where she worked was seized by Defendants' and held under Defendants' control for fourteen days, during which time this Plaintiff was unable to earn a livelihood working at said nightclub.

13. Plaintiff, **ROYDON STONE**, was employed as a doorman at Tiffany's Cabaret at 3659 Mendenhall in Memphis, Tennessee on July 11, 1996. He was not in the club when it was seized by Defendants on July 11, 1996, but because of the seizure, for fourteen days after July 11, 1996, he was unable to

earn a livelihood working at said nightclub. This Plaintiff suffered lost income as a result of said seizure. This Plaintiff also suffered lost income after the club reopened as a direct result of Defendants' seizure of the club, the illegal detention of patrons, the publicity attendant thereto, and the resulting drop in the volume of business after reopening.

14. Plaintiff, **JENNIFER ANN CLEVELAND**, was employed as an entertainer at Tiffany's Cabaret at 3659 Mendenhall in Memphis, Tennessee on July 11, 1996. She was physically seized by the arm and illegally detained on July 11, 1996 at Tiffany's Cabaret when unknown-named law enforcement officers, acting under the supervision and with the authorization, approval or acquiescence of Defendants Parrish and Pierotti, entered the nightclub and caused all employees, patrons, and customers in the club to be illegally detained. She was detained without legal authority or justification. She was involuntarily interrogated and forced to submit to a search of her personal property. She was not charged with any criminal offense, and after being detained for a period of hours was released. Because of Defendants' seizure of the nightclub where she worked, this Plaintiff was unable to earn a livelihood working at said nightclub for a period of fourteen days and lost income as a result. This

Plaintiff also suffered lost income after the club reopened as a direct result of Defendants' seizure of the club, the illegal detention of patrons, the publicity attendant thereto, and the resulting drop in the volume of business after reopening. Also as a result of Defendants' seizure of said nightclub, this Plaintiff was deprived of the opportunity to engage in performing her dance routine at said nightclub, the performance of which is a type of artistic expression protected by the First Amendment of the United States Constitution.

15. Plaintiff, **FRED DAY**, was employed as a manager at The Gold Club at 777 North White Station in Shelby County, Tennessee on July 11, 1996. He was not in the club when it was seized by Defendants on July 11, 1996, but because of the seizure, for fourteen days after July 11, 1996, he was unable to earn a livelihood working at said nightclub. This Plaintiff suffered lost income as a result of said seizure. This Plaintiff also suffered lost income after the club reopened as a direct result of Defendants' seizure of the club, the illegal detention of patrons, the publicity attendant thereto, and the resulting drop in the volume of business after reopening.

16. Plaintiff, **ROBERT HOLLAND**, was employed as a doorman at the Gold Club at 777 North White Station in Shelby County, Tennessee on July 11,

1996. When he arrived at the Gold Club on that date to report for work, he was met in the parking lot by unknown officers acting under the supervision of and with the authorization, approval or acquiescence of the Defendants Parrish and Pierotti. He was required by said officers to accompany them into said club where he was illegally detained without legal authority or justification. He was involuntarily interrogated and forced to submit to a search of his personal property. He was not charged with any criminal offense, and after being detained for a period of hours, was released. Because of the seizure, for the fourteen days after July 11, 1996, he was unable to earn a livelihood working at said nightclub. This Plaintiff suffered lost income as a result of said seizure. This Plaintiff also suffered lost income after the club reopened as a direct result of Defendants' seizure of the club, the illegal detention of patrons, the publicity attendant thereto, and the resulting drop in the volume of business after reopening.

17. Plaintiff, **BEVERLY McFARLAND**, was employed as an entertainer at The Gold Club at 777 North White Station in Shelby County, Tennessee on July 11, 1996. She was not in said nightclub when it was seized, but because of the seizure, for fourteen days after July 11, 1996, she was unable to earn a livelihood working at said nightclub. This Plaintiff

suffered lost income as a result of said seizure. This Plaintiff also suffered lost income after the club reopened as a direct result of Defendants' seizure of the club, the illegal detention of patrons, the publicity attendant thereto, and the resulting drop in the volume of business after reopening. Also as a result of Defendants' seizure of said nightclub, this Plaintiff was deprived of the opportunity to engage in performing her expressive dance routine at said nightclub, the performance of which is a type of artistic expression protected by the First Amendment of the United States Constitution.

18. Plaintiff, **TAMMY ZANETTI**, was employed as an entertainer at The Gold Club at 777 North White Station in Shelby County, Tennessee on July 11, 1996. She was not in said nightclub when it was seized by Defendants on July 11, 1996, but because of the seizure, for the fourteen days after July 11, 1996, she was unable to earn a livelihood working at said nightclub. This Plaintiff suffered lost income as a result of said seizure. This Plaintiff also suffered lost income after the club reopened as a direct result of Defendants' seizure of the club, the illegal detention of patrons, the publicity attendant thereto, and the resulting drop in the volume of business after reopening. Also as a result of Defendants' seizure of said nightclub, this Plaintiff was deprived of the opportunity to engage in

performing her expressive dance routine at said nightclub, the performance of which is a type of artistic expression protected by the First Amendment of the United States Constitution.

19. Plaintiff, **GEANNA SMITH**, was employed as an entertainer at The Gold Club at 777 North White Station in Shelby County, Tennessee on July 11, 1996. When she arrived at the Gold Club on that date to report for work, she was met in the parking lot by unknown officers acting under the supervision and with the authorization, approval or acquiescence of the Defendants Parrish and Pierotti. She was required by said officers to accompany them into said club where she was illegally detained without legal authority or justification. She was involuntarily interrogated and forced to submit to a search of her personal property. She was not charged with any criminal offense, and after being detained for a period of hours, was released. Because of the seizure, for the fourteen days after July 11, 1996, she was unable to earn a livelihood working at said nightclub. This Plaintiff suffered lost income as a result of said seizure. This Plaintiff also suffered lost income after the club reopened as a direct result of the Defendants' seizure of the club, the illegal detention of patrons, the publicity attendant thereto, and the resulting drop in the volume of business after reopening. Also as a result

of Defendants' seizure of said nightclub, this Plaintiff was deprived of the opportunity to engage in performing her expressive dance routines at said nightclub, the performance of which is a type of artistic expression protected by the First Amendment of the United States Constitution.

20. Plaintiff, **TONG**, was not employed at any nightclub on July 11, 1996, but was delivering some business papers to Tiffany's Cabaret at 3659 Mendenhall in Memphis, Tennessee between 6:15 and 6:30 p.m. on that date. When she drove into the parking lot at Tiffany's Cabaret, she was met by unknown-named officers acting under the supervision and with the authorization, approval or acquiescence of Defendants Parrish and Pierotti. She was required by said officers to accompany them into said nightclub when she was illegally detained for over five hours without legal authority or justification, being released between 11:30 and 11:45 p.m. She was involuntarily interrogated and forced to submit to a search of her personal property. Because of the seizure of the Gold Club and Tiffany's Cabaret, for fourteen days after July 11, 1996, Plaintiff lost income relating to various business functions which she performed with respect to the two aforesaid clubs.

21. Defendant, **JOHN W. PIEROTTI**, was at the time relevant here, the District Attorney General for the

Thirtieth Judicial District of Tennessee. Acting under color of office as District Attorney General, but in an investigative role outside his role as prosecutor, he engaged in conduct as alleged herein and supervised the conduct of dozens of law enforcement officers, whose actions of July 11, 1996 until July 26, 1996 this Defendant authorized or approved or in which this Defendant acquiesced, all in derogation of the constitutional rights of Plaintiffs and those persons similarly situated.

22. Defendant, **LARRY E. PARRISH**, was at the time relevant here, an attorney licensed to practice law in the State of Tennessee. Some of the acts alleged herein were committed by Parrish as a private citizen and attorney. From on or about July 11, 1996, Parrish began to act under the purported authority of an appointment to the title of "Special Assistant District Attorney General." At all times relevant here, Parrish acted in concert with and as part of a conspiracy with Defendant Pierotti to engage in personal conduct and to direct, authorize or approve of the conduct of dozens of law enforcement officers, all in derogation of the constitutional rights of Plaintiffs and those persons similarly situated. No such office or position exists under Tennessee law as a "Special Assistant District Attorney General" and Parrish acted at all times

relevant here as a private citizen as described above, albeit acting under color of law.

23. Defendant, **MARK GLANKLER**, is an investigator in the Office of District Attorney General. At times relevant here, he acted in concert with Defendants Parrish and Pierotti, and supervised other law enforcement officers, to deprive Plaintiffs and those similarly situated of the rights. This Defendant actively and personally participated in the unconstitutional seizures of the Plaintiffs and/or persons similarly situated as employees, patrons, or customers of the eight nightclubs which were seized on Thursday, July 11, 1996, as well as the forcible occupation of the real property giving rise to deprivation of the Plaintiffs' constitutional rights.

24. Defendant, **JOHN SIMMONS**, is an agent with the Tennessee Bureau of Investigation. At all times relevant here, he acted in concert with Defendants Parrish and Pierotti, and supervised other law enforcement officers, to deprive Plaintiffs and those similarly situated of their rights. This Defendant actively and personally participated in the unconstitutional seizures of the Plaintiffs and/or persons similarly situated as employees, patrons, or customers of the eight nightclubs which were seized on Thursday, July 11, 1996, as well as the forcible occupation of the real property giving rise to deprivation of the Plaintiffs' constitutional rights.

25. Each of the Defendants named individually hereinabove is sued in his individual capacity for damages for actions taken under color of state law.

26. **John Does No. 1** through **300** and **Jane Doe No. 1** through **300** are unknown law enforcement officers connected variously with the Memphis Police Department, the Shelby County Sheriff's Department, the Tennessee Bureau of Investigation, and with other federal, state, or local police agencies unknown to Plaintiffs. All John and Jane Doe Defendants acted in concert with Defendants Parrish and Pierotti, and with each other on or about July 11, 1996 and thereafter, to seize and detain illegally the Plaintiffs herein and those persons who were similarly situated as employees, patrons, or customers of the eight nightclubs which were seized on Thursday, July 11, 1996, and to cause said persons damages as alleged herein.

CLASS ACTION ALLEGATIONS

27. The Plaintiffs bring this action on behalf of themselves and all other persons similarly situated. The class consists of:

(a) all employees of the eight nightclubs which were seized by Defendants on the evening of July 11, 1996. The eight nightclubs are as follows:

Tiffany's Cabaret
3659 South Mendenhall

The Gold Club
777 North White Station

The MENZ Club
3918 Winchester

Platinum Plus
2514 Mt. Moriah

Valentino's
3880 Lamar

King of Clubs
1741 E. Brooks Rd.

Babe's
1875 E. Brooks Rd

Queen of Hearts
2882 Lamb Place

(b) all employees, patrons, customers, or other individuals who were in the aforementioned eight night clubs when said clubs were

seized on the evening of July 11, 1996 and who were unlawfully detained, were subjected to unlawful searches, were subject to involuntary interrogations and/or were issued documents denominated subpoenas ordering them to appear at a state office and submit to *ex parte* examinations under oath;

(c) all persons who were employed at any of the aforementioned eight night clubs as dancers engaging in performances of artistic expression and who were deprived of the opportunity to perform such dances at the respective clubs where they were employed during the period when Defendants maintained possession and control of said clubs.

28. Plaintiffs, Amanda Holland, David S. Tubbs, Ashley Burnette, Jeffery H. Toney, Tammie Wilson, Allison Rodgers, Ronnie Brothers, Rosalind Dearing, Cynthia Cooper, Roydon Stone, Jennifer Ann Cleveland, Fred Day, Robert Holland, Beverly McFarland, Tammy Zanetti and Geanna Smith are members of the sub-class defined in part (a) of the previous paragraph. Plaintiffs Amanda Holland, Ashley Burnette, Jeffery H. Toney, Tammie Wilson, Allison Rodgers, Ronnie Brothers, Cynthia Cooper, Jennifer Ann Cleveland, Robert Holland, Geanna Smith and Defendant Tong are members of the sub-class defined in part (b) of the previous paragraph.

Plaintiffs Tammie Wilson, Rosalind Dearing, Jennifer Ann Cleveland, Beverly McFarland, Tammy Zanetti and Geanna Smith, are members of the sub-class defined in part (c) of the previous paragraph.

29. The member of class members who have been affected by Defendants' unlawful conduct is estimated to be between 500 and 1,000 persons. The class size is larger than can be addressed by joinder.

30. This action presents questions of law and fact that are common to and affects the rights of all class members. The claims of the named Plaintiffs are typical of the claims of the class members as a whole.

31. The Plaintiffs will fairly and adequately represent the interests of the class. The Plaintiffs have retained counsel who are experienced in litigating civil rights cases and in litigating class action claims relating to the deprivation of civil rights.

32. This class action is brought pursuant to the provisions of Fed. R. Civ. P. 23(a) and 23(b)(1),(b)(2), and/or (b)(3).

GENERAL ALLEGATIONS

33. Prior to July 11, 1996, Defendants Parrish and Pierotti, acting individually and in concert, joining

together in a conspiracy to violate the rights of the Plaintiffs herein and those persons similarly situated.

34. Prior to July 11, 1996, Defendants Parrish and Pierotti actively solicited private funds for the purpose of pursuing as a matter of public policy the seizure of certain nightclubs in Memphis and Shelby County which offer exotic dancing as entertainment.

35. As part of the aforementioned conspiracy, Defendants Parrish and Pierotti agreed and conspired with various private persons, both known and unknown, to the affect that private parties would provide money and Defendants Parrish and Pierotti would accept such money in consideration for said Defendants pursuing a policy of seizing certain nightclubs which offer expressive nude or semi-nude dancing as entertainment.

36. As part of the aforesaid conspiracy, between December 20, 1995 and July 28, 1996, Defendant Parrish and/or Defendant Pierotti received at least fifty-six thousand dollars ($56,000.00) from various private persons which funds were not part of the official budget of the Office of the District Attorney General and which funds had not been appropriated by any state or local legislative body authorized by law to appropriate the expenditure of public funds. Said funds were also not subject to public audit by state or local officials charged with the responsibility of accounting for the use and expenditure of

funds by public agencies such as the Office of the District Attorney General.

37. As part of the aforesaid conspiracy, the Defendant Parrish, acting in concert with and with the authorization or approval of the Defendant Pierotti, from at least December 1995 and up to July 11, 1996, undertook to investigate and prepare a legal action to be brought on relation of the District Attorney in the name of the State of Tennessee against certain nightclubs even though Parrish had no official standing or position within the District Attorney's office, was not on any public payroll of the District Attorney's Office, and had not been sworn in as an Assistant District Attorney of the Thirtieth Judicial District.

38. As part of the aforesaid conspiracy, Defendant Parrish or Defendant Pierotti, or both, contacted D. J. Alissandratos, a Chancellor of the Shelby County Chancery Court, and solicited Chancellor Alissandratos to participate with them in the preparation of eight civil lawsuits to be filed in Chancery Court against each of the eight nightclubs previously listed herein and to be heard by Chancellor Alissandratos.

39. As part of the aforesaid conspiracy, from July 6 through July 10, 1996, Defendant Parrish or Defendant Pierotti, or both, had private, *ex parte* meetings with Chancellor Alissandratos at various

43. As part of the aforesaid conspiracy, on July 11, 1996, Defendants Parrish and Pierotti caused to be filed with the Shelby County Chancery Court, eight separate lawsuits, one against each of the aforelisted eight nightclubs and various persons and legal entities associated with the operation of said nightclubs. The lawsuits eventually filed on July 11, 1996 contained deletions, additions, and alterations made at the direction of Chancellor Alissandratos.

44. On July 11, 1996 the Defendant Parrish, acting as counsel along with assistants to the Defendant Pierotti, filed on behalf of the State of Tennessee on relation of the Defendant Pierotti a series of prolix pleadings against various *in rem* and *in personam* Defendants, alleging the existence of public nuisances at, among other locations, premises municipally known as 777 N. White Station Road (Chancery Docket No. 107842-3) and 3659 South Mendenhall (Chancery Docket No. 107849-2(3)). Each of these pleadings was sworn on the oath of the Defendant Pierotti, who vouched for the truth of the averments of the pleadings in the following manner:

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places including the private residence of Chancellor Alissandratos for the purpose of discussing and planning the aforementioned lawsuits against the eight nightclubs.

40. As part of the aforesaid conspiracy, Chancellor Alissandratos offered private *ex parte* legal advice to Defendants Parrish and/or Pierotti concerning how the aforementioned lawsuits should be drafted and what type of supporting material should be prepared so that Chancellor Alissandratos would sign court orders which purported to authorize the seizure of the eight nightclubs previously listed herein by the District Attorney's Office and police acting for said office.

41. As part of the aforesaid conspiracy, neither Defendants Parrish or Pierotti nor Chancellor Alissandratos gave any notice or opportunity to be heard to persons connected with any of the eight nightclubs or to any of the various legal entities, or officials thereof, which owned and operated the respective nightclubs.

42. As part of the aforesaid conspiracy, normal procedures within the Shelby County Chancery Court were ignored or circumvented. Such normal procedures include, without limitation, the assignment of cases among the various Chancellors by random selection.

I, John W. Pierotti, plaintiff on relation for the State of Tennessee, do hereby make oath that the factual allegations in the foregoing complaint, to the best of my knowledge, are true and correct.

/s/ John W. Pierotti
John W. Pierotti

[*jurat omitted*]

The Defendant Pierotti has not appeared as counsel for the State of Tennessee in any of the referenced proceedings, but instead participated only as relator.

45. As part of the aforesaid conspiracy, the said eight lawsuits sought to seize and forfeit to the State of Tennessee the buildings and real property in which the eight nightclubs were located.

46. As part of the aforesaid conspiracy, Defendants Parrish and Pierotti obtained through private, *ex parte* meetings, the signature of Chancellor Alissandratos authorizing eight Temporary Restraining Orders which purported to be the authorization of a Chancellor of the Chancery Court allowing the seizures of the eight nightclubs by the District Attorney's offices and law enforcement officers acting in concert therewith.

47. As part of the aforesaid conspiracy, no official or representative of any of the eight nightclubs was provided any notice that Defendants Parrish and Pierotti were undertaking to obtain Temporary Restraining Orders which purported to authorize the seizure of the nightclubs, nor was any official or representative granted an opportunity to appear and be heard in opposition to any orders which might allow the clubs to be seized.

48. Each of the eight Temporary Restraining Orders issued by Chancellor Alissandratos and drafted by Defendant Parrish, or under his direction, directed the seizures of "A parcel of Real Property, With Its' Apurtences [sic] and Attachments, municipally known as 3658 S. Mendenhall."

49. Defendants Parrish, Pierotti, Glankler, Simmons and all unnamed Defendants who were engaged in seizing the eight nightclubs on the evening of July 11, 1996 knew, or reasonably should have known, that the address contained on each of the eight Temporary Restraining Orders, 3658 S. Mendenhall, was not the address of any of the eight nightclubs listed previously.

50. 3658 S. Mendenhall has never been assigned as an address in Memphis, Tennessee. In fact, there is so such address in Memphis.

51. Defendants Parrish, Pierotti, Glankler, Simmons, and all unnamed Defendants who were engaged in

seizing the eight nightclubs on July 11, 1996 knew, or reasonably should have known, that the Temporary Restraining Orders signed by Chancellor Alissandratos were null and void and were not valid legal authorization for seizing any real property with a street address different from 3658 S. Mendenhall.

52. None of the so-called "Temporary Restraining Orders" referenced above purported to authorize the seizure, arrest or detention of any person. To the contrary, such orders directed the Defendants Glankler and Simmons to evacuate persons from the [non-existent] premises. [*Emphasis added.*]

53. As part of the aforementioned conspiracy, Defendants Parrish, Pierotti, Glankler, Simmons and numerous unknown defendant law enforcement officers, all acting individually and in concert with each other, and conspiring together acting under the supervision and with the authorization, approval or acquiescence of the Defendants Parrish and Pierotti, beginning between 5:30 p.m. and 6:00 p.m. on July 11, 1996, went to the previously-listed eight nightclubs.

54. As part of the aforementioned conspiracy, approximately 20 to 40 law enforcement officers acting under the supervision and control and with the authorization, approval or acquiescence of Defendants Parrish and Pierotti, went to each of the eight nightclubs. The events that ensued at each

club were the direct result of the supervision, direction, and control of Defendants Parrish and Pierotti.

55. The time for the seizure of all eight nightclubs was intentionally planned by Defendants Parrish and Pierotti to occur at approximately 6:00 p.m., a time when Defendants expected the clubs to be very busy and have a relatively large number of customers present.

56. At each nightclub a law enforcement officer announced to all present inside the nightclub that the club was being seized and that all employees, patrons, and customers must remain where they were until they were released by the authorities.

57. At each nightclub all persons inside the club were detained by law enforcement officers without cause for periods ranging from one to five hours.

58. During the period when the people inside the nightclubs were being detained, law enforcement officers refused to allow various detainees to use a telephone to call a spouse or relative, even when a detained person specifically requested to make such a call because such detainee was expected at home and was overdue. Other detainees were refused permission to go to their vehicle to obtain identification which law enforcement authorities had demanded. Still other detainees were temporarily

refused permission to move about within the nightclub for the purpose of visiting a restroom.

59. In general, during the period when people inside the nightclubs were being detained, at all eight nightclubs, such people were under the custody and direction of the law enforcement authorities at each club and were allowed to leave only after complying with the orders of said authorities.

60. At each nightclub, law enforcement authorities conducted a search of the premises without a search warrant.

61. At each nightclub, after approximately 45 minutes to an hour, law enforcement authorities announced that the detainees would be allowed to leave upon each individual's producing personal identification and allowing police authorities to copy same.

62. At each nightclub, all persons inside the club at the time of seizure, patrons, customers, and employees, were required to produce identification, one at a time. The identification information was then transferred, usually by photocopier, to a subpoena. The individual was then handed a document denominated a subpoena and ordered to report to the address on the subpoena, which was the office suite of a department of Tennessee state government in Memphis, at a later date. The individual was then allowed to leave.

63. At all eight nightclubs combined, it is estimated that more than 500 people were detained without probable cause nor legal authority for periods ranging from about one hour to five hours.

64. During the period when people were being detained inside the nightclub, when new customers arrived at the various clubs, some would be allowed to enter the club where they were then detained and required to produce identification and be served with a subpoena before being allowed to leave.

65. As to all nightclubs, some club employees and patrons were involuntarily required to respond to police interrogation before being allowed to leave. Some club employees and patrons were forced to a search of personal property such as purses or brief cases before being allowed to leave.

66. The subpoenas with which all people at all nightclubs were served before being allowed to leave was not a valid subpoena, but an abuse of process utilized by Defendants Parrish and Pierotti as a means of coercing those persons who had been detained into appearing at a state office in order that Parrish, Pierotti or others working under their supervision could take a sworn statement from such person *ex parte*, and without notice to the opposing parties in the respective civil actions.

67. No notice of deposition was provided to opposing parties in the respective civil actions against the

eight nightclubs with respect to which the subpoenas had been issued.

68. Many prior detainees at the various nightclubs who had been served with the invalid subpoenas appeared as ordered in the subpoena at the time and place indicated. Such use of subpoenas constitutes an abuse of process and a deprivation of the right to due process of those persons as subpoenaed.

69. The eight nightclubs previously listed remained under the custody and control of Defendants Parrish and Pierotti and remained closed for business for fourteen days at which time the authority, if any, ostensibly granted by the Temporary Restraining Orders expired, and this United States District Court required Defendants to relinquish control to the respective private owners.

70. The Defendants herein, named and unnamed, knew that many people were employed at the eight nightclubs respectively and that the seizure and closure of the nightclubs would render all, or most all, of the nightclubs' employees unable to be gainfully employed during the period when Defendants unlawfully had possession and control of the nightclubs.

71. The Defendants herein, named and unnamed, knew and intended that the treatment of the nightclubs' customers in the evening of July 11, 1996, and the widespread coverage of those events in the print and

electronic media, would directly cause potential customers to stay away from the nightclubs out of fear of again being detained by police.

72. After the nightclubs reopened after July 25, 1996, employees who worked as expressive dancers or as waiters experienced a reduction in income in reduced volume of tips as a direct result of Defendants' conduct. The Plaintiffs aver that this interference with the Plaintiffs' ability to earn an income and pursue their occupations was a foreseeable and intended consequence of the instant Defendants' actions.

73. The Defendants knew that entertainers employed at each of the eight nightclubs performed expressive dances, a form of artistic expression, and that as a direct result of the seizure of the eight clubs, the continuing expressive dance performances of each entertainer would be effectively prevented.

74. In addition to the seizure of the eight nightclubs, Defendants Parrish and Pierotti caused other defendant officers to forcibly enter and seize the business offices of Southern Entertainment Management Company, Inc., located at 995 South Yates in Shelby County. Various business functions are performed at this location related to the operation of the Gold Club, Tiffany's Cabaret and the Menz Club. This property was searched without a search warrant and seized without any civil action

having been filed against it and without any valid Temporary Restraining Order having been issued which purported to authorize such conduct.

75. Defendants Parrish and Pierotti knew, or reasonably should have known that Tennessee law, whether by nuisance statute, Tenn. Code Ann. § 29-3-107, or otherwise, does not authorize the forfeiture of real-property for conduct which constitutes a violation of the nuisance statute.

COUNT I

42 U.S.C. § 1983

(Fourth Amendment Violation)

76. Plaintiffs repeat and reallege all of the allegations set forth in paragraphs 1 through 75 above.

77. The unlawful law enforcement practices described in paragraphs 1 through 75 deprived the Plaintiffs and the other members of the plaintiff class of rights secured to them by the Fourth Amendment to the United States Constitution, specifically, the right to be free from unreasonable searches and seizures.

78. At all times relevant to this action, the Defendants with the exception of Defendant Parrish were acting under the color of their office(s) as District Attorney General (Pierotti) or officer/official of a state, county, or municipal law enforcement agency (all remaining defendants), and their acts were

performed under the color of the laws, regulations, customs, policies, and usages of the State of Tennessee, Shelby County, and the City of Memphis.

79. At all times relevant to this action either Parrish was acting as a private citizen who was acting in concert with Pierotti and other Defendants and was conspiring with Pierotti and other Defendants to act under the color of the laws of the State of Tennessee or he was acting under the color of his official capacity as Special Assistant District Attorney, if such position actually exists, and his acts were performed under the color of the laws, regulations, customs, policies and usages of the State of Tennessee, Shelby County, and the City of Memphis.

80. At all times relevant hereto, the Defendant Pierotti had decision-making authority regarding the law enforcement practices and policies utilized by the various law enforcement officers and officials acting in concert with him and engaging in the acts alleged herein under his supervision.

81. At all times relevant hereto, the Defendant Parrish was acting with decision making authority delegated directly to him by the Defendant Pierotti in his administrative or investigative capacity, and the Defendant Parrish's actions represented the joint, concerted action of the Defendant Pierotti or were

undertaken with the authorization, approval or acquiescence of the Defendant Pierotti.

82. The aforementioned actions of Defendants were undertaken willfully and knowingly, or with reckless and callous indifference to the protected rights of the Plaintiffs and the other members of the plaintiff class under the Constitution of the United States.

83. As a direct result of the aforementioned unlawful law enforcement conduct and practice, the Plaintiffs and other members of the plaintiff class have been deprived of their rights secured by the Fourth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs and other members of the plaintiff class request that this court:

(a) certify this case as a class action under the provisions of Fed. R. Civ. P. 23(a) and 23(b) (1), 23(b)(2), or 23(b)(3);

(b) award compensatory damages for the injuries suffered by Plaintiffs and the other members of the plaintiffs class as a direct result of the unlawful searches and seizures;

(c) award punitive damages to the Plaintiffs and the other members of the plaintiff class;

(d) award litigation costs and expenses, including reasonable attorneys' fees, to the

Plaintiffs and the other members of the plaintiff class; and

(e) grant such further or general relief as the Plaintiffs and the other members of the plaintiff class may be entitled.

COUNT II
42 U.S.C. § 1983
(First Amendment Violation)

84. Plaintiffs repeat and reallege all of the allegations set forth in paragraphs 1 through 75 above.

85. The unlawful law enforcement practices described in paragraphs 1 through 75 deprived those plaintiffs who performed dance routines and thereby engaged in artistic expression, as part of their employment at their respective nightclubs, and the other members of the subclass described in paragraph 26(c) above who likewise performed dance routines and so engaged in artistic expression at one of the eight nightclubs, of rights secured to them by the First Amendment to the United States Constitution, specifically, the right to freedom of speech and expression and to be free from prior restraints upon said speech and expression.

86. At all times relevant to this action, the Defendants with the exception of Defendant Parrish were acting under the color of their office(s) as District Attorney

General (Pierotti) or officer/official of a state, county, or municipal law enforcement agency (all remaining defendants), and their acts were performed under the color of the laws, regulations, customs, policies, and usages of the State of Tennessee, Shelby County, and the City of Memphis.

87. At all times relevant to this action, the Defendant Parrish was acting either as a private citizen who was acting in concert with the Defendant Pierotti and other Defendants and was conspiring with Pierotti and other Defendants to act under color of the laws of the State of Tennessee or he was acting under the color of his official capacity as Special Assistant District Attorney, if such position actually exists, and his acts were performed under the color of the laws, regulations, customs, policies, and usages of the State of Tennessee, Shelby County, and the City of Memphis.

88. At all times relevant hereto, the Defendant Pierotti had decision-making authority regarding the law enforcement practices and policies utilized by the various law enforcement officers and officials acting in concert with him and engaging in the acts alleged herein under his supervision.

89. At all times relevant hereto, the Defendant Parrish was acting with decision making authority delegated directly to him by the Defendant Pierotti in his

administrative or investigative capacity, and the Defendant Parrish's actions represented the joint, concerted action of the Defendant Pierotti or were undertaken with the authorization, approval or acquiescence of the Defendant Pierotti.

90. The aforementioned actions of Defendants were undertaken willfully and knowingly, or with reckless indifference to the protected rights of the Plaintiffs and the other members of the plaintiff class under the Constitution of the United States.

91. As a direct result of the aforementioned unlawful law enforcement conduct and practices, the Plaintiffs who performed dance routines and engaged in artistic expression as described above, and other members of the plaintiff sub-class of dancers as described above, have been deprived of their rights secured by the First Amendment to the United States Constitution.

WHEREFORE, Plaintiffs and other members of the plaintiff class request that this court:

(a) certify this case as a class action under the provisions of Fed. R. Civ. P. 23(a) and 23(b)(1), 23(b)(2), or 23(b)(3);

(b) award compensatory damages for the injuries suffered by Plaintiffs and the other members of the plaintiff class as a direct result of the

unlawful restraint and violation of freedom of speech and expression;

(c) award punitive damages to the Plaintiffs and the other members of the plaintiff class;

(d) award litigation costs and expenses, including reasonable attorney's fees, to the Plaintiffs and the other members of the plaintiff class; and

(e) grant such further or general relief as the Plaintiffs and the other members of the plaintiff class may be entitled.

COUNT III
42 U.S.C. § 1983
(Due Process Clause)

92. Plaintiffs repeat and reallege all of the allegations set forth in paragraphs 1 through 75 above.

93. The unlawful law enforcement practices described in paragraphs 1 through 75 deprived the Plaintiffs and the other members of the plaintiff class of rights secured to them by the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution.

94. At all times relevant to this action, the Defendants with the exception of Defendant Parrish were acting under the color of their office(s) as District Attorney General (Pierotti) or officer/official of a state,

county, or municipal law enforcement agency (all remaining defendants), and their acts were performed under the color of the laws, regulations, customs, policies, and usages of the State of Tennessee, Shelby County, and the City of Memphis.

95. At all times relevant to this action the Defendant Parrish was acting either as a private citizen who was acting in concert with Pierotti and other Defendants and was conspiring with Pierotti and other Defendants to act under the color of the laws of the State of Tennessee or under the color of his official capacity as Special Assistant District Attorney, if such position actually exists, and his acts were performed under the color of the laws, regulations, customs, policies, and usages of the State of Tennessee, Shelby County, and the City of Memphis.

96. At all times relevant hereto, Pierotti had decision-making authority regarding the law enforcement practices and policies utilized by the various law enforcement officers and officials acting in concert with him and engaging in the acts alleged herein under his supervision.

97. At all times relevant hereto, the Defendant Parrish was acting with decision making authority delegated directly to him by the Defendant Pierotti in his administrative or investigative capacity, and the

Defendant Parrish's actions represented the joint, concerted action of the Defendant Pierotti or were undertaken with the authorization, approval or acquiescence of the Defendant Pierotti.

98. The aforementioned actions of Defendants were undertaken willfully and knowingly, or with reckless indifference to the protected rights of the Plaintiffs and the other members of the plaintiff class under the Constitution of the United States.

99. As a direct result of the aforementioned unlawful law enforcement conduct and practice, the Plaintiffs and the other members of the plaintiff class have been deprived of their rights secured by the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiffs and other members of the plaintiff class request that this court:

(a) certify this case as a class action under the provisions of Fed. R. Civ. P. 23(a) and 23(b)(1), 23(b)(2), or 23(b)(3);

(b) award compensatory damages for the injuries suffered by plaintiffs and the other members of the plaintiffs class as secured by the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution.

(c) award punitive damages to the plaintiffs and the other members of the plaintiff class;

(d) award litigation costs and expenses, including reasonable attorney's fees, to the plaintiffs and the other members of the plaintiff class; and

(e) grant such further or general relief as the Plaintiffs and the other members of the plaintiff class may be entitled.

COUNT IV
42 U.S.C. § 1983
(Fourteenth Amendment Violation)

100. Plaintiffs repeat and reallege all of the allegations set forth in paragraphs 1 through 75 above.

101. The aforementioned unlawful law enforcement practices deprived the Plaintiffs and the other members of the plaintiff class of rights secured to them by the Fourteenth Amendment to the United States Constitution, the right to equal protection of the laws.

102. At all times relevant to this action, the Defendants with the exception of Defendant Parrish were acting under the color of their official capacities as District Attorney General (Pierotti) or officer/official of a state, county, or municipal law enforcement agency (all remaining defendants), and their acts were

performed under the color of the laws, regulations, customs, policies, and usages of the State of Tennessee, Shelby County, and the City of Memphis.

101. At all times relevant to this action either Parrish was acting as a private citizen who was acting in concert with Pierotti and other Defendants and was conspiring with Pierotti and other Defendants to act under the color of the laws of the State of Tennessee or he was acting under the color of his official capacity as Special Assistant District Attorney, if such position actually exists, and his acts were performed under the color of the laws, regulations, customs, policies, and usages of the State of Tennessee, Shelby County, and the City of Memphis.

102. At all times relevant hereto, Pierotti had decision-making authority regarding the law enforcement practices and policies utilized by the various law enforcement officers and officials acting in concert with him and engaging in the acts alleged herein under his supervision.

103. At all times relevant hereto, the Defendant Parrish was acting with decision making authority delegated directly to him by the Defendant Pierotti in his administrative or investigative capacity, and the Defendant Parrish's actions represented the joint, concerted action of the Defendant Pierotti or were

undertaken with the authorization, approval or acquiescence of the Defendant Pierotti.

104. The aforementioned actions of Defendants were undertaken willfully and knowingly, or with reckless indifference to the protected rights of the Plaintiffs and the other members of the plaintiff class under the Constitution of the United States.

105. As a direct result of the aforementioned unlawful law enforcement conduct and practice, the Plaintiffs and the other members of the plaintiff class have been deprived of their rights, secured by the Equal Protection of Laws Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs and other members of the plaintiff class request that this court:

(a) certify this case as a class action under the provisions of Fed. R. Civ. P. 23(a) and 23(b)(1), 23(b)(2), or 23(b)(3);

(b) award compensatory damages for the injuries suffered by plaintiffs and the other members of the plaintiffs class as secured by the Equal Protection of Laws Clause of the Fourteenth Amendment to the United States Constitution.

(c) award punitive damages to the plaintiffs and the other members of the plaintiff class;

(d) award litigation costs and expenses, including reasonable attorney's fees, to the plaintiffs and the other members of the plaintiff class; and

(e) grant such further or general relief as the Plaintiffs and the other members of the plaintiff class may be entitled.

Respectfully submitted,

E. E. Edwards, III
(Supreme Court Reg. No. 3418)
EDWARDS and SIMMONS
1707 Division Street, Suite 100
Nashville, Tennessee 37203
(615) 254-3334

/s/ John E. Herbison
John E. Herbison
(Supreme Court Reg. No. 12659)
2016 Eighth Avenue South
Nashville, Tennessee 37204
(615) 297-5900

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that a correct and complete copy of the foregoing has been hand-delivered or mailed, first class postage prepaid, to Larry E. Parrish, 6075 Poplar Avenue, Suite 420, Memphis, Tennessee 38119, to Frank J. Glankler, Jr. and Robert L. Hutton, Glankler Brown, PLLC, One Commerce Square, Seventeenth Floor, Memphis, Tennessee 38103-2566, Mary M. Bers and Heather C. Ross, Assistant Attorneys General, 425 Fifth Avenue North, Nashville, Tennessee 37243-0488, David E. Caywood and Marc E. Reisman, Causey, Caywood, Taylor, McManus & Bailey, 100 North Main, Suite 2400, Memphis, Tennessee 38103, and to David Wade, Martin, Tate, Morrow & Marston, P.C., 22 North Front Street, 11th Floor, Memphis, Tennessee 38103-1182, this 20th day of January, 1998.

/s/ John E. Herbison
JOHN E. HERBISON

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION AT MEMPHIS

STEPHEN CRAIG COOPER,	)	
et al.,	)	
Plaintiffs.	)	
	)	
v.	)	**No. 97-2625-TU-A**
	)	**JURY DEMANDED**
LARRY E. PARRISH,	)	
et al.,	)	
Defendants.	)	

Western Dist.
of Tenn.
Filed 8/18/97

MOTION OF LARRY E. PARRISH TO DISMISS COMPLAINT[1]

COMES NOW defendant, Larry E. Parrish (hereinafter "**Parrish**") and respectfully joins all other defendants in their motions to dismiss the complaint.

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[1]In the case styled ***KING OF CLUBS, ET AL. v. CITY OF MEMPHIS, WALKUP, GIBBONS AND PARRISH,*** **No.95-3016 DA (W.D. TENN., DONALD, J.)** (hereinafter "**King of Clubs** case"), this court has under advisement (briefing is completed and a ruling is imminent) motions to dismiss filed by Parrish and others where the same immunity and injunction issues are or have been raised.

FOR CAUSE, pursuant to *Federal Rules of Civil Procedure*, Rule 12(b)(6), movant would show that, taking all of the relevant facts (separated from conclusory allegations of fact and references to law) in the light most favorable to the plaintiffs, the complaint fails to state any cause of action or claim on which relief can be granted.

FOR FURTHER CAUSE, movant would show that plaintiffs have failed to meet the heightened pleading standard necessary to state the claims the plaintiffs have attempted to allege.

FOR FURTHER CAUSE, movant would show that, taking all of the relevant facts (separated from conclusory allegations of fact and references to law) plaintiffs, by the allegations appearing in the complaint, have stated judicial admissions which estop plaintiffs from filing suit against plaintiff.

FOR FURTHER CAUSE, movant would show that the complaint is filed in violation of the *Federal Rules of Civil Procedure*, Rule 11, as evidenced by the fact that there are alleged as facts in the complaint certain propositions which are in direct contradiction to the truth which is known to plaintiffs and which judicially noticeable from the records of this court.

FOR FURTHER CAUSE, movant would show that Parrish is absolutely immune from suit by the United States Constitution, Eleventh Amendment.

FOR FURTHER CAUSE, movant would show that Parrish is absolutely immune from suit by the doctrine of judicial immunity.

FOR FURTHER CAUSE, movant would show that Parrish is absolutely immune from suit by the doctrine of prosecutorial immunity.

FOR FURTHER CAUSE, movant would show that Parrish is immune from suit by the doctrine of qualified immunity.

FOR FURTHER CAUSE, movant would show that, in violation of *Federal Rules of Civil Procedure*, Rule 11, the complaint is filed in bad faith and with malice with the ulterior motive of being released from accountability for criminal conduct and the normal consequences of maintaining a nuisance in the form of real and personal property.

FOR FURTHER CAUSE, movant would show that defendants, are precluded from filing the instant complaint because, at the time the complaint was filed, criminal indictments were and remain pending against said plaintiffs accusing said plaintiffs of violations of criminal law related to the actions and conduct which are the subject matter of these plaintiffs' allegations.

Respectfully submitted,
LARRY E. PARRISH, P.C.

By: /s/ Larry E. Parrish

Larry E. Parrish, #8464
The Crescent Center
6075 Poplar Avenue
Suite 420
Memphis, Tennessee 38119
(901) 767-8000

CERTIFICATE OF SERVICE

This is to certify that the foregoing was served upon counsel for the adverse party and counsel for the plaintiffs by placing a true and exact copy in the United States mail, postage prepaid, addressed to John E. Herbison, Esq., 2016 Eighth Avenue South, Nashville, Tennessee 37204 and to E.E. Edwards, III, Esq., Suite 100, 1707 Division Street, Nashville, Tennessee 37203; and, Mary M. Bers, Assistant Attorney General, State of Tennessee, 2nd Floor Cordell Hull Building, 426 Fifth Avenue North, Nashville, Tennessee 37243-0488, David Wade, Martin Tate Morrow & Marston, P.C., 22 North Front Street, Eleventh Floor, Falls Building, Memphis, Tennessee 38103, Robert L. Hutton, Glankler Brown, PLLC, One Commerce Square, Suite 1700, Memphis, Tennessee 38103, David E. Caywood, Causey, Caywood, Taylor, McManus & Bailey, 100 North Main, Suite 2400, Memphis, Tennessee 38103 and Lieutenant David Martello, 225 Channel 3 Drive, Memphis, Tennessee 38103; on this the 16th day of August 1997.

/s/ Larry E. Parrish
Larry E. Parrish

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION AT MEMPHIS

AMANDA HOLLAND, et al.,	)	Western Dist. of Tenn. Filed 8/18/97
Plaintiffs.	)	
v.	)	**No. 97-2626-MIBRE**
LARRY E. PARRISH, et al.,	)	**CLASS ACTION**
Defendants.	)	

MOTION OF LARRY E. PARRISH TO DISMISS COMPLAINT[1]

COMES NOW defendant, Larry E. Parrish (hereinafter "**Parrish**") and respectfully joins all other defendants in their motions to dismiss the complaint.

FOR CAUSE, pursuant to *Federal Rules of Civil Procedure*, Rule 12(b)(6), movant would show that, taking all of the relevant facts (separated from conclusory allegations of fact and references to law) in the light most

[1]In the case styled ***KING OF CLUBS, ET AL. v. CITY OF MEMPHIS, WALKUP, GIBBONS AND PARRISH*, No.95-3016 DA (W.D. TENN., DONALD, J.)** (hereinafter "**King of Clubs** case"), this court has under advisement (briefing is completed and a ruling is imminent) motions to dismiss filed by Parrish and others where the same immunity and injunction issues are or have been raised.

favorable to the plaintiffs, the complaint fails to state any cause of action or claim on which relief can be granted.

FOR FURTHER CAUSE, movant would show that plaintiffs have failed to meet the heightened pleading standard necessary to state the claims the plaintiffs have attempted to allege.

FOR FURTHER CAUSE, movant would show that, taking all of the relevant facts (separated from conclusory allegations of fact and references to law) plaintiffs, by the allegations appearing in the complaint, have stated judicial admissions which estop plaintiffs from filing suit against plaintiff.

FOR FURTHER CAUSE, movant would show that the complaint is filed in violation of the *Federal Rules of Civil Procedure*, Rule 11, as evidenced by the fact that there are alleged as facts in the complaint certain propositions which are in direct contradiction to the truth which is known to plaintiffs and which judicially noticeable from the records of this court.

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FOR FURTHER CAUSE, movant would show that, in violation of *Federal Rules of Civil Procedure*, Rule 11, the complaint is filed in bad faith and with malice with the ulterior motive of being released from accountability for criminal conduct and the normal consequences of maintaining a nuisance in the form of real and personal property.

FOR FURTHER CAUSE, movant would show that defendants, are precluded from filing the instant complaint because, at the time the complaint was filed, criminal indictments were and remain pending against said plaintiffs accusing said plaintiffs of violations of criminal law related to the actions and conduct which are the subject matter of these plaintiffs' allegations.

Respectfully submitted,
LARRY E. PARRISH, P.C.

By: /s/ Larry E. Parrish

Larry E. Parrish, #8464
The Crescent Center
6075 Poplar Avenue
Suite 420
Memphis, Tennessee 38119
(901) 767-8000

CERTIFICATE OF SERVICE

This is to certify that the foregoing was served upon counsel for the adverse party and counsel for the plaintiffs by placing a true and exact copy in the United States mail, postage prepaid, addressed to John E. Herbison, Esq., 2016 Eighth Avenue South, Nashville, Tennessee 37204 and to E.E. Edwards, III, Esq., Suite 100, 1707 Division Street, Nashville, Tennessee 37203; and, Mary M. Bers, Assistant Attorney General, State of Tennessee, 2nd Floor Cordell Hull Building, 426 Fifth Avenue North, Nashville, Tennessee 37243-0488, David Wade, Martin Tate Morrow & Marston, P.C., 22 North Front Street, Eleventh Floor, Falls Building, Memphis, Tennessee 38103, Robert L. Hutton, Glankler Brown, PLLC, One Commerce Square, Suite 1700, Memphis, Tennessee 38103, David E. Caywood, Causey, Caywood, Taylor, McManus & Bailey, 100 North Main, Suite 2400, Memphis, Tennessee 38103 and Lieutenant David Martello, 225 Channel 3 Drive, Memphis, Tennessee 38103; on this the 16th day of August 1997.

/s/ Larry E. Parrish
Larry E. Parrish

STATE OF TENNESSEE

DON SUNDQUIST
GOVERNOR

July 31, 1997

Mr. Larry E. Parrish
Attorney at Law
6075 Poplar Avenue, Suite 420
Memphis, TN 38119-4763

Dear Mr. Parrish:

A determination has been made, based on the request of and information provided by William L. Gibbons, District Attorney General for the 30th Judicial District, that the interest of the State requires the appointment of additional counsel to the District Attorney General to assist in handling criminal indictments and petitions to abate nuisances in the Criminal Court of Shelby County relating to the parcels of property known by the following addresses: 1575 E. Brooks, 777 N. White Station, 3918 Winchester, 1741 E. Brooks, 2514 Mt. Moriah, 2882 Lamb Place, 3659 S. Mendenhall, 3880 Lamar and 1849 E. Brooks.

Pursuant to T. C. A. § 8-6-106, I, Don Sundquist, Governor of the State of Tennessee, do hereby appoint you as additional counsel to the District Attorney General for the 30th Judicial District in this Criminal Court litigation at the trial level to provide counsel and advice under the direction of District Attorney General William L. Gibbons.

You have agreed to serve as additional counsel without compensation from the State. To the extent you receive compensation from any other source for your services you agree (1) to disclose to Attorney General John Knox Walkup the amount and source of any compensation received by you; (2) that information relating to any compensation you receive for your services will be public record; and (3) that regardless of the source of compensation, you services will be performed at the direction of the District Attorney General for the 30th Judicial District.

This appointment is subject to cancellation at any time by the Governor or the Attorney General. You may withdraw as additional counsel at any time by notifying the Attorney General.

Please signify your acceptance of this appointment and the terms and conditions thereof by signing and returning a copy of this letter of appointment to the Honorable John Knox Walkup, Attorney General and Reporter, 425 5th Avenue North, Nashville, Tennessee 37243-0497.

Thank you in advance for your faithful and diligent service to the State of Tennessee.

Sincerely,

/s/ Don Sundquist
Don Sundquist

ACCEPTED: /s/ Larry E. Parrish
Larry E. Parrish

APPROVED:

/s/ John Knox Walkup
JOHN KNOX WALKUP
Attorney General and Reporter

xc: The Honorable Riley Darnell

STATE OF TENNESSEE

DON SUNDQUIST
GOVERNOR

Mr. Larry E. Parrish
Attorney at Law
6075 Poplar Avenue, Suite 420
Memphis, TN 38119-4763

Dear Mr. Parrish:

A determination has been made, based on the request of and information provided by John W. Pierotti, District Attorney General for the 30th Judicial District, that the interest of the state requires the appointment of additional counsel to the Attorney General in matters relating to the case of State of Tennessee ex rel. John W. Pierotti v. A Parcel of Real Property, Municipally Known As 1575 East Brooks Road, Memphis, Tennessee, et al., No. 96-2729 ML/V (W. D. Tenn. West Division) and its companion cases.

Pursuant to T. C. A. § 8-6-106, I, Don Sundquist, Governor of the State of Tennessee, do hereby appoint you as additional counsel to the Attorney General in this federal

court litigation at the trial level to provide counsel and advice to the Attorney General and the District Attorney General for the 30th Judicial District of Tennessee under the direction of District Attorney General John W. Pierotti consistent with his authority from the Attorney General to represent the interests of the State in this litigation.

You have agreed to serve as additional counsel without compensation from the State. To the extent you receive compensation from any other source for your services you agree (1) to disclose to Attorney General Charles W. Burson the amount and source of any compensation received by you; (2) that information relating to any compensation you receive for your services will be public record; and (3) that regardless of the source of compensation, your services will be performed at the direction of the District Attorney General Pierotti as authorized by the Attorney General.

This appointment is subject to cancellation at any time by the Governor or the Attorney General. You may withdraw as additional counsel at any time by notifying the Attorney General.

Please signify your acceptance of this appointment and the terms and conditions thereof by signing and returning a copy of this letter of appointment to the Honorable Charles W. Burson, Attorney General and Reporter, 500 Charlotte Avenue, Nashville, Tennessee 37243-0497.

Thank you in advance for your faithful and diligent service to the State of Tennessee.

Sincerely,

/s/ Don Sundquist
Don Sundquist

ACCEPTED: /s/ Larry E. Parrish
Larry E. Parrish

APPROVED:

/s/ Charles W. Burson
CHARLES W. BURSON
Attorney General and Reporter

xc: The Honorable Riley Darnell
The Honorable Charles W. Burson

OATH OF OFFICE

I, LARRY E. PARRISH, having been appointed Special Assistant District Attorney to the District Attorney General for the Thirtieth Judicial District of the State of Tennessee, comprising the County of Shelby, said appointment having been made by **JOHN W. PIEROTTI**, the duly elected and commissioned District Attorney General for the aforesaid Judicial District of the State of Tennessee, make oath and swear that I will perform, with fidelity, the duties of the office to which I have been appointed and which I am about to assume, and that I will support the Constitution of the State of Tennessee and the Constitution of the United States.

/s/ Larry E. Parrish

Sworn to and subscribed before me on this the 11th day of July 1996.

/s/ James C. Beasley, Jr.
JUDGE, Division 10
OF THE CRIMINAL COURT
SHELBY COUNTY,
TENNESSEE

OATH OF OFFICE

I, LARRY E. PARRISH, having been appointed Special Assistant District Attorney to the District Attorney General for the Thirtieth Judicial District of the State of Tennessee, comprising the County of Shelby, said appointment having been made by **WILLIAM L. GIBBONS**, the duly appointed and commissioned District Attorney General for the aforesaid Judicial District of the State of Tennessee, make oath and swear that I will perform, with fidelity, the duties of the office to which I have been appointed and which I am about to assume, and that I will support the Constitution of the State of Tennessee and the Constitution of the United States.

/s/ Larry E. Parrish

Sworn to and subscribed before me on this the 12th day of February 1997.

/s/ James C. Beasley, Jr.
JUDGE, Division 10
OF THE CRIMINAL COURT
SHELBY COUNTY,
TENNESSEE

AMENDMENT TO SUPREME COURT RULE 4:

Supreme Court Rule 4 is amended by deleting the old rule in its entirety and replacing it with the following:

Rule 4 --Publication of Opinions-- Not for Citation Designation -- Precedential Value and Citation of Unpublished Opinions.

(A)(1) As used in this Rule, "publication" means publication in the official reporter (Southwestern Reporter 2d).

(2) Unless explicitly designated "Not For Publication", all opinions of the Tennessee Supreme Court shall be published in the official reporter. Concurring and dissenting opinions shall be published along with the majority opinion.

(3) Opinions of the Special Workers' Compensation Appeals Panels shall not be published unless publication is ordered by a majority of the Supreme Court.

(4) The Clerk of this Court will promptly file opinions of this Court. A copy of the opinions shall be provided to the Attorney General and Reporter upon filing.

(B) No opinion of the Court of Appeals or Court of Criminal Appeals shall be published in the official reporter

until after the time for filing an application for permission to appeal has expired.

(C) If an application for permission to appeal is filed and granted, the opinion of the intermediate appellate court shall not be published in the official reporter, unless otherwise directed by the Tennessee Supreme Court.

(D) If an application for permission to appeal is filed and denied with the recommendation that the intermediate appellate court opinion be published, the author of the intermediate appellate court opinion shall ensure that the opinion is published in the official reporter.

(E) If an application for permission to appeal is filed and denied, the opinion of the intermediate appellate court may be published in the official reporter in accordance with the rules of the intermediate appellate court if the opinion meets one or more of the following standards of publication:

(i) the opinion establishes a new rule of law, alters or modifies an existing rule, or applies an existing rule to a set of facts significantly different from those stated in other published opinions;

(ii) the opinion involves a legal issue of continuing public interest;

(iii) the opinion criticizes, with reasons given, an existing rule of law;

(iv) the opinion resolves an apparent conflict of authority, whether or not the earlier opinion or opinions are reported;

(v) the opinion updates, clarifies or distinguishes a principle of law; or

(vi) the opinion makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law. See Court of Appeals Rule 11(b) and Court of Criminal Appeals Rule 19.1(a).

(F)(1) If an application for permission to appeal is hereafter denied by this Court with a "Not for Citation" designation, the opinion of the intermediate appellate court has no precedential value.

(2) An opinion so designated shall not be published in any official reporter nor cited by any judge in any trial or appellate court decision, or by any litigant in any brief, or other material presented to any court, except when the opinion is the basis for a claim of res judicata, collateral estoppel, law of the case, or to establish a split of authority, or when the opinion is relevant to a criminal, post-

conviction or habeas corpus action involving the same defendant.

(3) From and after the effective date of this Rule, the precedential and citation value applicable to intermediate appellate court decisions designated "Not for Citation", shall also apply to intermediate appellate court decisions which have previously been designated, "Denied, Concurring in Results Only" (DCRO), or "Denied, Not for Publication," (DNP).

(G) If no application for permission to appeal is filed, or if an application is filed but dismissed as untimely, publication of the intermediate appellate court opinion shall proceed in accordance with either Court of Appeals Rule 11 or Court of Criminal Appeals Rule 19.

(H)(1) An unpublished opinion shall be considered controlling authority between the parties to the case when relevant under the doctrines of the law of the case, res judicata, collateral estoppel, or in a criminal, post-conviction, or habeas corpus action involving the same defendant. Unless designated "Not For Citation," "DCRO" or "DNP" pursuant to subsection (F) of this Rule, unpublished opinions for all other purposes shall be considered persuasive authority. Unpublished opinions of the Special Workers' Compensation Appeals Panel shall likewise be considered persuasive authority.

(2) Opinions reported in the official reporter, however, shall be considered controlling authority for all purposes unless and until such opinion is reversed or modified by a court of competent jurisdiction.

(I)(l) A copy of any unpublished opinion cited shall be furnished to the court and all parties by attaching it to the document in which it is cited.

(2) The title page of the copies and any citation to the unpublished decision shall contain a notation indicating whether or not an application for permission to appeal has been filed and, if filed, the date and disposition of the application. Where appropriate, the notation shall indicate that an application has been filed and is currently pending.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 42, ***United States Code*** §1983.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Tennessee Constitution, Art.VI, §5

An Attorney General and Reporter for the State, shall be appointed by the Judges of the Supreme Court and shall hold his office for a term of eight years. An **Attorney for the State** for any circuit or district, for which a Judge having criminal jurisdiction shall be provided by law, shall be **elected by** the qualified **voters of** such circuit or **district**, and shall hold his office for a term of eight years,

and shall have been a resident of the State five years, and of the circuit or district one year. In all cases where the Attorney for any district fails or refuses to attend and prosecute according to law, the Court shall have power to appoint an Attorney pro tempore.

Tennessee Code Annotated §8-6-106

In all cases where the interest of the state requires, in the judgment of the governor and attorney general reporter, additional counsel to the attorney general and reporter or district attorney general, the governor shall employ such counsel, who shall be paid such compensation for services as the governor, secretary of state, and attorney general and reporter may deem just, the same to be paid out of any money in the treasury not otherwise appropriated, upon certificate of such officers certifying the amount to the commissioner of finance and administration.

Tennessee Code Annotated §8-7-103

It is the duty of each district attorney general to:

(1) Attend the circuit courts in the district, and every other court therein having criminal jurisdiction, and prosecute on behalf of the state in every case in which the state is a party, or is in any wise interested;

(2) Have an indictment against any person, in court by warrant, already prepared on the second day of the court, and forthwith send it before the grand jury, together with

the witnesses, that the same may be, on the second day, found a true bill or ignored, at as little cost as possible;

(3) Dismiss all witnesses, if the bill is ignored, and, if found to be true, then to dismiss all witnesses that live within ten (10) miles of the seat of justice until state's day;

(4) Send indictments, ex officio, in the cases prescribed in §40-13-104;

(5) Advise the clerks of the circuit and criminal courts in, and superintend, the making out of a full and perfect caption, to be prefixed to the proceedings of those courts in criminal cases, at each term, on the first day of the same;

(6) Give an opinion, without charge, whenever called upon by any county officer in the district, upon any question of law relating to the duties of the county officer's office;

(7) Call upon the county clerk and the clerks of the circuit, criminal and chancery courts on the second day of every term, for their execution dockets, to ascertain whether any execution placed in the hands of the sheriff has not been returned, and, if not, to move for judgment against such sheriff and the sheriff's sureties, in favor of the state or county, or any other party, for such sums as appear from the docket to be due the state or county, or school fund, or other party, upon such execution;

(8) Move the circuit court for judgment against any judge of the court of general sessions or sheriff, of whose failure to pay moneys collected under the small offense law

into the county treasury the district attorney general is notified by the trustee;

(9) Call upon the county clerk, and demand and receive from such clerk, the clerk's original revenue bond, and forward the same to the commissioner of revenue, upon notification from the commissioner that the clerk has not forwarded the bond to the commissioner within ten (10) days after its date;

(10) Notify such clerk, if the bond has not been executed and recorded, that, on a given day, the district attorney general will move the court to cause the bond to be executed;

(11) Prosecute all motions against delinquent collectors of public taxes, when made, or ordered to be made, by the commissioner of revenue or county executive, without any charge therefor;

(12) Make to the commissioner of revenue, on August 1 every year, a detailed statement of all claims placed in the district attorney general's hands for collection;

(13) Move against any collector of taxes for judgment for double the amount of taxes collected from any taxpayer for whose taxes such collector has received a credit by representing the taxpayer to have become insolvent or to have removed from the county;

(14) Call on every clerk in the district, at the first court after November 1 every year, for the receipts for the public moneys collected by the clerk and for the receipt of

the commissioner of revenue for the clerk's statement of moneys collected by the clerk;

(15) Prosecute any person reported to the district attorney general by the county clerk for a breach of the revenue laws in relation to licenses, except hawkers, peddlers, and exhibitors of shows;

(16) Inquire into the unlawful conversion, use, investment, or lending, by the clerk of any court, of any money, property, or effects belonging to any party, witness, officer, or other person in any suit pending in any court, and to prosecute the clerk without a prosecutor;

(17) Prosecute suit in the name of the state of Tennessee, against the agent of any foreign bank, for transacting banking business in this state without license;

(18) Attend to all suits brought by supervisors of public roads when the same are brought into the circuit or criminal courts by certiorari, appeal, or otherwise;

(19) Prosecute in the federal court all criminal cases removed from a state court in the district to any inferior federal court;

(20) Cooperate and assist, upon the request or direction of the attorney general and reporter, in the bringing, prosecution, defense, preparation, and trial of all cases in the circuit and chancery courts in which the attorney general and reporter is required to appear for the protection of the state or the public interest;

(21) Participate, when in the district attorney general's judgment it is necessary or desirable for more

effective law enforcement within the judicial district, in joint efforts with other state, local or federal officials or agencies, including, but not limited to, participation in a judicial district task force relating to the investigation and prosecution of drug cases;

(22) Serve, when in the district attorney general's judgment it is necessary or desirable for more effective law enforcement within the judicial district, on committees, boards or commissions relating to law enforcement, including, but not limited to, the board of directors or other governing or advisory body of a judicial district task force relating to the investigation and prosecution of drug cases; and

(23) Submit to the office of executive secretary to the district attorneys general conference, within ninety (90) days after the end of each fiscal year, a written report specifying:

(A) Each source from which funds were received by the office of the district attorney general during the fiscal year;

(B) The amount of funds from each such source; and

(C) The disposition of all such funds.